ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
AMENDING, REPEALING AND RECREATING AND CREATING RULES [RWP1]

The Wisconsin Natural Resources Board proposes an order to **amend** NR 405.01(1) and (2), 405.02(1), (11), and (12), 408.02(1), (4), (5), (11), (13) and (21) and 484.04(21); to **repeal and recreate** NR 405.02(21), (24) and (24m) and 408.02(20), (23) and (27); to **create** NR 405.02(2m), (8u), (11c), (11e), (11j), (20m), (24e), (24s), (25b), (25d) to (25f), (25i), (25k) and (27m), 405.16(3) and (4), 405.18 to 405.22, 408.02(2m), (7m), (11e), (11m), (11s), (13m), (24m), (25m), (27m), (28e), (28j), (28m), (28s), (29m), (29s) and (32m), 408.06(10), (11) and (12), 408.10(5) and (6), 408.11 to 408.15 and 484.04(27m) and to **repeal** NR 405.02(1)(d), (27)(a)8, (27)(a)17, and (27)(a)18 relating to changes to chs. NR 405 and 408 for incorporation of federal changes to air permitting program.

AM-06-04

Analysis Prepared by the Department of Natural Resources

Authorizing statutes: ss. 227.11(2)(a) and 285.11(1), (16)and (17) and 285.65(14), Stats.

Statutes interpreted: ss. 285.11(6), 285.60 and 285.61 Stats. The State Implementation Plan developed under that provision is revised.

The proposed changes to chs. NR 405 and 408, Wis. Adm. Code, would affect the permitting requirements for many larger emission sources in Wisconsin. These changes are being undertaken in order to incorporate changes to the program required by recent changes in the equivalent Federal program and to improve the permitting program in Wisconsin.

The Federal changes to the new source review program which are addressed in this proposal were promulgated on December 31, 2002. The State has 3 years after this promulgation date to incorporate equivalent rules (rules which are at least as stringent as the Federal rules) into the Wisconsin Adm. Code. These changes are designed to meet this requirement well in advance of the early 2006 deadline for such changes.

The consent of the Attorney General and the Revisor of Statutes will be requested for the incorporation by reference of new test methods in ch. NR 484.

SECTION 1. NR 405.01(1) and (2) are amended to read:

NR 405.01(1) APPLICABILITY. The provisions of this chapter apply to ~~all~~ the construction of any new major stationary ~~sources and all~~ source or any project at an existing major ~~modifications to major sources~~ stationary source located in ~~areas~~ an area designated as attainment or ~~unclassified~~ unclassifiable.

(2) PURPOSE. The purpose of this chapter is to establish, pursuant to s. 285.60, Stats., the

requirements and procedures for reviewing and issuing air pollution control permits to ~~all~~ any new major stationary ~~sources~~ source and ~~all major modifications to~~ any project at an existing major ~~sources~~ source located in ~~areas~~ an area designated as attainment or ~~unclassified~~ unclassifiable.

SECTION 2. NR 405.02 (1)(intro.) and (a) to (c) are amended to read:

NR 405.02(1) "Actual emissions" means the actual rate of emissions of ~~an~~ a regulated NSR air contaminant from an emissions unit, as determined in accordance with pars. (a)~~through (d)~~ to (c), except that this definition does not apply for calculating whether a significant emissions increase has occurred as a result of a modification of an existing emissions unit or group of existing emissions units, or for establishing a PAL under s. NR 405.21. Instead, subs. (2m) and (25f) shall apply for those purposes.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air contaminant during a ~~2-year~~ consecutive 24 month period which precedes the particular date and which is representative of normal source operation. The department ~~may~~ shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit ~~unless reliable data are available which demonstrate that the actual emissions are different than the source-specific allowable emissions~~.

(c) For any emissions unit ~~other than an electric utility steam generating unit, which~~ that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

SECTION 2A. NR 405.02(1)(d) is repealed.

SECTION 3. NR 405.02(2m) and (8u) are created to read:

NR 405.02(2m) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR air contaminant, as determined in accordance with pars. (a) to (d).

(a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the air contaminant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

1. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with planned startups and shutdowns.

2. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

3. When a project involves multiple emissions units, only one consecutive 24-month period may be used to determine the baseline actual emissions for the emissions units being changed.

4. The same consecutive 24-month period shall be used for each regulated NSR air contaminant reviewed under the project unless an alternative consecutive 24-month period is allowed by the department.

5. The average rate may not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subd. 2.

(b) For an existing emissions unit, other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the

air contaminant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required under ch. NR 406, whichever is earlier.

1. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with planned startup and shutdowns.

2. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

3. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had the major stationary source been required to comply with the limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR part 63, the baseline actual emissions need only be adjusted if the state has taken credit for the emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of s. NR 408.06(9).

4. When a project involves multiple emissions units, only one consecutive 24-month period may be used to determine the baseline actual emissions for the emissions units being changed.

5. The same consecutive 24-month period shall be used for each regulated NSR air contaminant reviewed under the project unless an alternative consecutive 24-month period is allowed by the department.

6. The average rate may not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subds. 2. and 3.

(c) For a new emissions unit or replacement unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of the unit shall equal zero; and thereafter, shall equal one of the following:

1. The unit's potential to emit if the unit has operated for less than 24 months

2. An amount equal to 12-consectutive months of actual emissions from the unit if the unit has operated for 24 or more months.

(d) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in par. (a), for other existing emissions units in accordance with the procedures contained in par. (b), and for a new emissions unit or replacement unit in accordance with the procedures contained in par. (c).

(8u) "Clean unit" means any emissions unit that has been issued a permit under this chapter or ch. NR 408 that requires compliance with BACT or LAER, is complying with the BACT or LAER requirements, and qualifies as a clean unit under s. NR 405.18; or any emissions unit that has been designated by the department as a clean unit, based on the criteria in s. NR 405.19(3)(a) to (d).

SECTION 4. NR 405.02(11) is amended to read:

NR 405.02(11) "Construction" means any physical change or change in the method of operation, ~~(~~including fabrication, erection, installation, demolition, or modification of an emission unit~~)~~, which would result in a change in ~~actual~~ emissions.

SECTION 5. NR 405.02(11c), (11e) and (11j) are created to read:

NR 405.02(11c) "Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this chapter, to sample, condition if applicable, analyze and provide a record of emissions on a continuous basis.

(11e) "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the air contaminant mass emissions rate in terms of mass per unit of time.

(11j) "Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this chapter, to monitor process and control device operational parameters, for example, control device secondary voltages and electric currents, and other information, for example, gas flow rate, O_2 or CO_2 concentrations, and to record average operational parameter values on a continuous basis.

SECTION 6. NR 405.02(12) is amended to read:

NR 405.02(12) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any regulated NSR air contaminant ~~subject to regulation under the act~~ and includes an electric steam generating unit. For purposes of this chapter, there are 2 types of emissions units described as follows:

(a) A new emissions unit is any emissions unit which is or will be newly constructed and which has existed for less than 2 years from the date the emissions unit first operated. A replacement unit, as defined in sub. (25k), is also a new emissions unit.

(b) An existing emissions unit is any emissions unit that does not meet the requirements in par. (a).

SECTION 7. NR 405.02(20m) is created to read:

NR 405.02(20m) "Lowest achievable emission rate" or "LAER" has the meaning given in s. NR 408.02(19).

SECTION 8. NR 405.02(21) and (24) are repealed and recreated to read:

NR 405.02(21) "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR air contaminant and a significant net emissions increase of that air contaminant from the major stationary source.

(a) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(b) A physical change or change in the method of operation does not include:

1. Routine maintenance, repair and replacement.

2. Use of an alternative fuel or raw material by reason of any order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (15 USC 791 to 798) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act (16 USC 791a to 828c).

3. Use of an alternative fuel by reason of an order or rule under section 125 of the act (42 USC 7425).

4. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

5. Use of an alternative fuel or raw material by a stationary source when one of the following applies:

a. The source was capable of accommodating the alternative fuel or raw material before January 6, 1975, unless the change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to this chapter or ch. NR 406 or 408 or under an operation permit issued pursuant to ch. NR 407.

b. The source is approved to use the alternative fuel or raw material under any permit issued under

this chapter or ch. NR 406, 407 or 408.

6. An increase in the hours of operation or in the production rate, unless the change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to this chapter, ch. NR 406 or 408 or 40 CFR 52.21 or under an operation permit issued pursuant to ch. NR 407.

7. Any change in ownership at a stationary source.

8. The addition, replacement or use of a PCP at an existing emissions unit meeting the requirements of s. NR 405.20. A replacement control technology shall provide more effective emissions control than that of the replaced control technology to qualify for this exclusion.

9. The installation, operation, cessation or removal of a temporary clean coal technology demonstration project, provided that the project complies with both of the following:

a. The state implementation plan.

b. Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

10. The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated air contaminant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

11. The reactivation of a very clean coal-fired electric utility steam generating unit.

(c) This definition does not apply with respect to a particular regulated NSR air contaminant when the major stationary source is complying with the requirements under s. NR 405.21 for a PAL for that air contaminant. Instead, the definition at s. NR 405.21(2)(f) shall apply.

(24) (a) "Net emissions increase" means, with respect to any regulated NSR air contaminant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

1. Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to sub. (27m)(a) to (e).

2. Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in sub. (2m).

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the following:

1. The date 5 years before construction on the particular change commences.

2. The date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if all of the following are satisfied:

1. It occurs within a reasonable period to be specified by the department.

2. The department has not relied on it in issuing a permit for the source under this chapter and the permit is in effect when the increase in actual emissions from the particular change occurs.

3. The increase or decrease in emissions did not occur at a clean unit, except as provided in ss. NR 405.18(8) and 405.19(10).

(d) An increase or decrease in actual emissions of sulfur dioxide, nitrogen oxides or particulate matter measured as PM_{10} which occurs before the applicable minor source baseline date is credible only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that all of the following are satisfied:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions.

2. It is enforceable as a practical matter at and after the time that actual construction on the particular change begins.

3. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

4. The decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a clean unit under s. NR 405.19. Once an emissions unit has been designated as a clean unit, the owner or operator may not later use the emissions reduction from the air pollution control measures that the clean unit designation is based on in calculating the net emissions increase for another emissions unit, i.e., may not use that reduction in a "netting analysis" for another emissions unit. However, any new emissions reductions that were not relied upon in a PCP excluded pursuant to s. NR 405.20 or for the clean unit designation are creditable to the extent they meet the requirements in s. NR 405.20(7)(d) for the PCP and s. NR 405.18(8) or 405.19(10) for a clean unit.

(g) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular air contaminant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(h) Paragraph (b) does not apply for determining creditable increases and decreases except for replacement units.

SECTION 9. NR 405.02(24e) is created to read:

NR 405.02(24e) "Planned startup or shutdown" means a startup or shutdown which the owner or

operator of a process, emission unit or emission control device intends to occur on a specific date or at a specific time. Startup and shutdowns which are caused in whole or by part by unplanned events such as malfunctions are not planned startups or shutdowns even though the startups or shutdowns may be included in a source's malfunction prevention and abatement plan or any other similar emission reduction plan.

SECTION 10. NR 405.02(24m) is repealed and recreated to read:

NR 405.02(24m) "Pollution control project" or "PCP" means any activity, set of work practices or project, including pollution prevention, undertaken at an existing emissions unit that reduces emissions of air contaminants from the unit. Qualifying activities or projects can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects listed in pars. (a) to (f) are presumed to be environmentally beneficial pursuant to s. NR 405.20(3)(a). Projects not listed may qualify for a case-specific PCP exclusion pursuant to the requirements of s. NR 405.20(3) and (6).

(a) Conventional or advanced flue gas desulfurization or sorbent injection for control of SO_2.

(b) Electrostatic precipitators, baghouses, high efficiency multiclones or scrubbers for control of particulate matter or other air contaminants.

(c) Flue gas recirculation, low-NO_X burners or combustors, selective noncatalytic reduction, selective catalytic reduction, low emission combustion for IC engines, and oxidation and absorption catalyst for control of NO_X.

(d) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this

paragraph,‘‘hydrocarbon combustion flare’’ means either a flare used to comply with an applicable NSPS or MACT standard including uses of flares during startup, shutdown or malfunction permitted under an applicable standard, or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide.

(e) Activities or projects undertaken to accommodate switching or partially switching to an inherently less polluting fuel, to be limited to the following fuel switches:

1. Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to 0.05% sulfur diesel, i.e., from a higher sulfur content #2 fuel or from #6 fuel, to CA 0.05% sulfur #2 diesel.

2. Switching from coal, oil or any solid fuel to natural gas, propane or gasified coal.

3. Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of ‘‘unclean’’ wood.

4. Switching from coal to #2 fuel oil with a maximum sulfur content of 0.5%.

5. Switching from high sulfur coal to low sulfur coal with a maximum sulfur content of 1.2%.

(f) Activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the both of the following requirements:

1. The productive capacity of the equipment is not increased as a result of the activity or project.

2. The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. To make this determination, the following procedures shall be used:

a. Determine the ODP of the substances by consulting 40 CFR part 82, subpart A, appendices A and B incorporated by reference in s. NR 484.04(29).

b. Calculate the replaced ODP weighted amount by multiplying the baseline actual usage, using the annualized average of any 24 consecutive months of usage within the past 10 years, by the ODP of the

replaced ODS.

c. Calculate the projected ODP weighted amount by multiplying the projected annual usage of the new substance by its ODP.

d. If the value calculated in this subd. 2.b. is more than the value calculated in this subd. 2.c., the projected use of the new substance is lower, on an ODP weighted basis, than the baseline usage of the replaced ODS.

SECTION 11. NR 405.02(24s), (25b), (25d), (25e), (25f), (25i) and (25k) are created to read:

NR 405.02(24s) "Pollution prevention" means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air contaminants, including fugitive emissions, and other contaminants to the environment prior to recycling, treatment or disposal. Pollution prevention does not mean recycling, other than certain "in-process recycling" practices, energy recovery, treatment or disposal.

(25b) "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters, for example, control device secondary voltages and electric currents, and other information, for example, gas flow rate, O_2 or CO_2 concentrations, and calculate and record the mass emissions rate, for example, lb/hr, on a continuous basis.

(25d) "Prevention of significant deterioration program" or "PSD program" means a major source preconstruction permit program that has been approved by the administrator and incorporated into the state implementation plan to implement the requirements of 40 CFR 51.166. Any permit issued under a PSD program is a major NSR permit.

(25e) "Project" means a physical change in, or change in method of operation of, an existing major stationary source.

(25f)(a) "Projected actual emissions" means the maximum annual rate, in tons per year, at which

an existing emissions unit is projected to emit a regulated NSR air contaminant in any one of the 10 years following the date the unit resumes regular operation after the project.

(b) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source shall do all of the following:

1. Consider all relevant information, including historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities and compliance plans under the approved state implementation plan.

2. Include fugitive emissions to the extent quantifiable and emissions associated with planned startups and shutdowns.

[Drafters note: The department seeks comment on the use of an adjustment factor to project demand growth and methods for clarifying the method of use of this adjustment factor in projecting emissions as discussed in sub. 3. After considering comments, the department will evaluate the ability to implement the use of the demand adjustment factor in a clear, consistent and certain manner through this regulation.]

3. Exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under sub. (2m) and that are also unrelated to the particular project, including any increased utilization due to product demand growth. The owner or operator shall consider information prepared under subd. 1. when projecting increases in emissions due to product demand growth.

(c) In lieu of using the method in par. (b), the owner or operator may elect to use the emissions unit's potential to emit, in tons per year, as defined under sub. (25).

(25i) "Regulated NSR air contaminant" means all of the following:

(a) Any air contaminant for which a national ambient air quality standard has been promulgated and any constituents or precursors for the air contaminants identified by the administrator, e.g., volatile

organic compounds are precursors for ozone.

(b) Any air contaminant that is subject to any standard promulgated under section 111 of the act.

(c) Any Class I or II substance subject to a standard promulgated under or established by title VI of the act.

(d) Any air contaminant that otherwise is subject to regulation under the act; except that any or all hazardous air pollutants either listed in section 112 of the act (42 USC 7412) or added to the list pursuant to section 112(b)(2) of the act (42 USC 7412(b)(2)), which have not been delisted pursuant to section 112(b)(3) of the act (42 USC 7412 (b)(3)), are not regulated NSR air contaminants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general air contaminant listed under section 108 of the act (42 USC 7408).

(25k) "Replacement unit" means an emissions unit for which all the criteria in pars. (a) to (d) are met. Actual emissions shall be used when determining credible emission reductions generated from shutting down the existing unit that is replaced.

(a) The emissions unit is a reconstructed unit within the meaning of s. NR 400.02(130) or the emissions unit completely takes the place of an existing emissions unit.

(b) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(c) The replacement does not change the basic design parameter or parameters of the process unit.

(d) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

SECTION 11A. NR 405.02(27)(a)8, 17, and 18 are repealed.

SECTION 12. NR 405.02(27m) is created to read:

NR 405.02(27m) "Significant emissions increase" means, for a regulated NSR air contaminant, an increase in emissions that is significant for that air contaminant. The following tests are used to determine whether a significant emissions increase will occur as a result of a project:

(a) *Actual-to-projected-actual applicability test for projects that only involve existing emissions units*. A significant emissions increase of a regulated NSR air contaminant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit, equals or exceeds the significant amount for that air contaminant.

(b) *Emission test for projects that only involve construction of a new emissions unit or units*. A significant emissions increase of a regulated NSR air contaminant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that air contaminant.

(c) *Emission test for projects that only involve replacement emissions unit or units*. A significant emissions increase of a regulated NSR air contaminant is projected to occur if the sum of the difference between the potential to emit of each replacement unit following the completion of the project and the actual emissions of each emissions unit being replaced equals or exceeds the significant amount for that air contaminant.

(d) *Emission test for projects that involve clean units*. For a project that will be constructed and operated at a clean unit without causing the emissions unit to lose its clean unit designation, no emissions increase is deemed to occur.

(e) *Hybrid test for projects that involve multiple types of emissions units*. A significant emissions increase of a regulated NSR air contaminant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in pars. (a) to (c) as applicable with respect to each

emissions unit, for each type of emissions unit equals or exceeds the significant amount for that air contaminant. For example, if a project involves both an existing emissions unit and a clean unit, the projected increase is determined by summing the values determined using the method specified in par. (a) for the existing unit and determined using the method specified in par. (d) for the clean unit.

SECTION 13. NR 405.16(3) and (4) are created to read:

NR 405.16(3) The following specific provisions apply to projects at existing emissions units at a major stationary source, other than projects at a clean unit or at a source with a PAL, in circumstances where the owner or operator calculates the difference between projected actual emissions using a method specified in s. NR 405.02(25f)(b)1. to 3., prior to any demand growth adjustment under s. NR 405.02(25f)(b)3., and baseline actual emissions exceeds the level that is considered significant for the air contaminant:

(a) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of all of the following:

1. A description of the project.

2. Identification of the emissions unit or units whose emissions of a regulated NSR air contaminant could be affected by the project.

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR air contaminant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under s. NR 405.02(25f)(b)3. and an explanation why the amount was excluded, and any netting calculations, if applicable.

(b) Before beginning actual construction, the owner or operator shall provide a copy of the information in par. (a) to the department. Nothing in this paragraph shall be construed to require the owner or operator of the unit to obtain any determination from the department before beginning actual

construction.

(c) The owner or operator shall monitor the emissions of any regulated NSR air contaminant that could increase as a result of the project and that is emitted by any emissions unit identified in par. (b) and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 10 years following resumption of regular operations after the change.

(d) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under par. (c) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(e) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in par. (a), exceed the baseline actual emissions, as documented and maintained pursuant to par. (c) by a significant amount, as defined in s. NR 405.02(27), for that regulated NSR air contaminant, and if the emissions differ from the preconstruction projection that was provided to the department pursuant to par. (b). The report shall be submitted to the department within 60 days after the end of the year. The report shall contain the following:

1. The name, address and telephone number of the major stationary source.

2. The annual emissions as calculated pursuant to par. (a)3.

3. Any other information that the owner or operator wishes to include in the report, e.g., an explanation as to why the emissions differ from the preconstruction projection.

(4) The owner or operator of the source shall make the information required to be documented and maintained pursuant to sub. (3) available for review upon request for inspection by the department or the general public.

SECTION 14. NR 405.18 to 405.21 are created to read:

NR 405.18 Clean unit test for emissions units that are subject to BACT or LAER. (1) APPLICABILITY. The provisions of this section apply to any emissions unit for which the department has issued a major NSR permit within the past 10 years. The owner or operator of a major stationary source has the option of using this section to determine whether emission increases at a clean unit are part of a project that is a major modification.

(2) GENERAL PROVISIONS FOR CLEAN UNITS. The provisions in pars. (a) to (d) apply to a clean unit.

(a) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation, as determined in accordance with sub. (4), and before the expiration date, as determined in accordance with sub. (5), will be considered to have occurred while the emissions unit was a clean unit.

(b) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT and the project would not alter any physical or operational characteristics that formed the basis for the BACT determination as specified in sub. (6)(d), the emissions unit remains a clean unit.

(c) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT or the project would alter any physical or operational characteristics that formed the basis for the BACT determination as specified in sub. (6)(d), the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions unless the unit re-qualifies as a clean unit pursuant to sub. (3)(c). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(d) A project that causes an emissions unit to lose its designation as a clean unit is subject to the

applicability requirements of s. NR 405.02(27m)(a), (b), (c) and (e) as if the emissions unit is not a clean unit.

(3) QUALIFYING OR RE-QUALIFYING TO USE THE CLEAN UNIT APPLICABILITY TEST. An emissions unit automatically qualifies as a clean unit when the unit meets the criteria in pars. (a) and (b). After the original clean unit designation expires in accordance with sub. (5) or is lost pursuant to sub. (2)(c), the emissions unit may re-qualify as a clean unit under either par. (c), or under the clean unit provisions in s. NR 405.19. To re-qualify as a clean unit under par. (c), the emissions unit shall obtain a new major NSR permit issued under this chapter and meet all the criteria in par. (c). The clean unit designation applies individually for each air contaminant emitted by the emissions unit.

(a) *Permitting requirement*. The emissions unit shall have received a major NSR permit within the past 10 years. The owner or operator shall maintain and be able to provide information that would demonstrate that this permitting requirement is met.

(b) *Qualifying air pollution control technologies*. Air contaminant emissions from the emissions unit shall be reduced through the use of air pollution control technology, which includes pollution prevention or work practices, that meets both of the following requirements:

1. The control technology achieves the BACT or LAER level of emissions reductions as determined through issuance of a major NSR permit within the past 10 years. However, the emissions unit is not eligible for the clean unit designation if the BACT determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

2. The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

(c) *Re-qualifying for the clean unit designation*. The emissions unit shall obtain a new major NSR permit that requires compliance with the current-day BACT, or LAER, and the emissions unit shall meet

the requirements in pars. (a) and (b).

(4) EFFECTIVE DATE OF THE CLEAN UNIT DESIGNATION. The effective date of an emissions unit's clean unit designation, that is, the date on which the owner or operator may begin to use the clean unit test to determine whether a project at the emissions unit is a major modification, is determined according to one of the following:

(a) *Original clean unit designation, and emissions units that re-qualify as clean units by implementing a new control technology to meet current-day BACT*. The effective date is the date the emissions unit's air pollution control technology is placed into service, or 3 years after the issuance date of the major NSR permit, whichever is earlier but no earlier than the date this section is approved by the administrator as part of the state implementation plan.

(b) *Emissions units that re-qualify for the clean unit designation using an existing control technology*. The effective date is the date the new, major NSR permit is issued.

(5) CLEAN UNIT EXPIRATION. An emissions unit's clean unit designation expires, that is, the date on which the owner or operator may no longer use the clean unit test to determine whether a project affecting the emissions unit is, or is part of, a major modification, according to one of the following:

(a) *Original clean unit designation, and emissions units that re-qualify by implementing new control technology to meet current-day BACT*. For any emissions unit that automatically qualifies as a clean unit under sub. (3)(a) and (b) or re-qualifies by implementing new control technology to meet current-day BACT under sub. (3)(c), the clean unit designation expires 10 years after the effective date, or the date the equipment went into service, whichever is earlier; or, it expires at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in sub. (7).

(b) *Emissions units that re-qualify for the clean unit designation using an existing control technology*. For any emissions unit that re-qualifies as a clean unit under sub. (3)(c) using an existing control technology, the clean unit designation expires 10 years after the effective date; or, it expires any

time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in sub. (7).

(6) REQUIRED OPERATION PERMIT CONTENT FOR A CLEAN UNIT. After the effective date of the clean unit designation, and in accordance with the provisions of ch. NR 407, but no later than when the operation permit is renewed, the operation permit for the major stationary source shall include all of the following terms and conditions related to the clean unit:

(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the air contaminants for which this clean unit designation applies.

(b) If the effective date of the clean unit designation is not known when the clean unit designation is initially recorded in the operation permit, e.g., because the air pollution control technology is not yet in service, the permit shall describe the event that will determine the effective date, e.g., the date the control technology is placed into service. Once the effective date is determined, the owner or operator shall notify the department of the exact date. This specific effective date shall be added to the source's operation permit at the first opportunity, such as a revision, reopening or renewal of the operation permit for any reason, whichever comes first, but in no case later than the next renewal.

(c) If the expiration date of the clean unit designation is not known when the clean unit designation is initially recorded into the operation permit, e.g., because the air pollution control technology is not yet in service, the permit shall describe the event that will determine the expiration date, e.g., the date the control technology is placed into service. Once the expiration date is determined, the owner or operator shall notify the department of the exact date. The expiration date shall be added to the source's operation permit at the first opportunity, such as a revision, reopening or renewal of the operation permit for any reason, whichever comes first, but in no case later than the next renewal.

(d) All emission limitations and work practice requirements adopted in conjunction with BACT, and any physical or operational characteristics that formed the basis for the BACT determination, e.g.,

possibly the emissions unit's capacity or throughput.

(e) Monitoring, recordkeeping and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation under sub. (7).

(f) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so, as presented in sub. (7).

(7) MAINTAINING THE CLEAN UNIT DESIGNATION. To maintain the clean unit designation, the owner or operator shall conform to all the restrictions listed in pars. (a) to (c). This subsection applies independently to each air contaminant for which the emissions unit has the clean unit designation. Failing to conform to the restrictions for one air contaminant affects the clean unit designation only for that air contaminant.

(a) The clean unit shall comply with the emission limitations and work practice requirements adopted in conjunction with the BACT that is recorded in the major NSR permit, and subsequently reflected in the operation permit. The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the BACT determination, e.g., possibly the emissions unit's capacity or throughput.

(b) The clean unit shall comply with any terms and conditions in the operation permit related to the unit's clean unit designation.

(c) The clean unit shall continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, the clean unit designation ends.

(8) NETTING AT CLEAN UNITS. Emissions changes that occur at a clean unit may not be included in calculating a significant net emissions increase, that is, may not be used in a "netting analysis", unless the emission changes occurred before the effective date of the clean unit designation, or after the

clean unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a clean unit. However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emission limitation if the reductions are surplus, quantifiable and permanent. For purposes of generating offsets, the reductions must also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

[Drafter's note: The Department seeks comment on the following pars. (a) to (c) in regard to the process that should be used to evaluate clean unit designation in the event that the area in which the clean unit is located in is redesignated from attainment to nonattainment. One or more of these provisions, or some variation of pars. (a) to (c) may be included the final version of the regulation.]

(9) EFFECT OF REDESIGNATION ON THE CLEAN UNIT DESIGNATION. (a) The clean unit designation expires 6 months from the date that an area that the clean unit is located is redesignated from attainment or unclassifiable to nonattainment, unless the owner or operator demonstrates to the satisfaction of the department that the clean unit meets a LAER level of control. Thereafter, the unit may not be requalified as a clean unit unless the unit is determined to meet LAER through the permitting procedures specified under s. NR 408.12(7).

(b) When an area in which the clean unit is located is redesignated from attainment or unclassifiable to nonattainment, the clean unit designation is not affected by any redesignation. However, any future project at the clean unit resulting in a significant net emissions increase shall be offset under the provisions s. NR 408.06.

(c) When an area in which the clean unit is located is redesignated from attainment or unclassifiable to nonattainment, the clean unit designation may be reevaluated by department in the preparation of its attainment plan.

(d) Redesignation of an area in which the clean unit is located from nonattainment to attainment

does not affect the clean unit designation.

NR 405.19 Clean unit provisions for emissions units that achieve an emission limitation comparable to BACT. (1) APPLICABILITY. The provisions of this section apply to emissions units which do not qualify as clean units under s. NR 405.18, but which are achieving a level of emissions control comparable to BACT, as determined by the department in accordance with subs. (2) to (11). The owner or operator of a major stationary source has the option of using this section to determine whether emission increases at a clean unit are part of a project that is a major modification.

(2) GENERAL PROVISIONS FOR CLEAN UNITS. All of the following provisions in pars. (a) to (d) apply to a clean unit:

(a) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation, as determined in accordance with sub. (5), and before the expiration date, as determined in accordance with sub. (6), shall be considered to have occurred while the emissions unit was a clean unit.

(b) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that has been determined, pursuant to sub. (4), to be comparable to BACT, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in sub. (8)(d), the emissions unit remains a clean unit.

(c) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined, pursuant to sub. (4), to be comparable to BACT, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in sub. (8)(d), the emissions unit loses its designation as a clean unit upon issuance

of the necessary permit revisions, unless the unit re-qualifies as a clean unit pursuant to sub. (3)(d). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(d) A project that causes an emissions unit to lose its designation as a clean unit is subject to the applicability requirements of s. NR 405.02(27m)(a), (b), (c) and (e) as if the emissions unit was never a clean unit.

(3) QUALIFYING OR RE-QUALIFYING TO USE THE CLEAN UNIT APPLICABILITY TEST. An emissions unit qualifies as a clean unit when the unit meets the criteria in pars. (a) to (c). After the original clean unit designation expires in accordance with sub. (6) or is lost pursuant to sub. (2)(c), the emissions unit may re-qualify as a clean unit under either par. (d), or under the clean unit provisions in s. NR 405.18. To re-qualify as a clean unit under par. (d), the emissions unit shall obtain a new permit issued pursuant to the requirements in subs. (7) and (8) and meet all the criteria in par. (d). The department shall make a separate clean unit designation for each air contaminant emitted by the emissions unit for which the emissions unit qualifies as a clean unit.

(a) *Qualifying air pollution control technologies*. Air contaminant emissions from the emissions unit shall be reduced through the use of air pollution control technology, which includes pollution prevention or work practices, that meets both of the following requirements:

1. The owner or operator has demonstrated that the emissions unit's control technology is comparable to BACT according to the requirements of sub. (4). However, the emissions unit is not eligible for the clean unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type, e.g., if the BACT determinations to which it is compared have resulted in a determination that no control measures are required.

2. The owner or operator made an investment to install the control technology. For the purpose of

this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

(b) *Impact of emissions from the unit*. The department shall determine whether the allowable emissions from the emissions unit will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality related value, such as visibility, that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(c) *Date of installation.* Emissions units that have previously installed control technology may qualify as clean units provided the technology is considered comparable to BACT as of January 1, 2001 or later. However, the owner or operator shall apply for the clean unit designation within 2 years after the effective date of this subsection… [revisor insert date]. For technologies installed after the effective date of this subsection… [revisor insert date], the owner or operator shall apply for the clean unit designation at the time the control technology is installed.

(d) *Re-qualifying as a clean unit*. The emissions unit shall obtain a new permit, pursuant to requirements in subs. (7) and (8), that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day BACT, and the emissions unit shall meet the requirements in pars. (a)1. and (b).

(4) DEMONSTRATING CONTROL EFFECTIVENESS COMPARABLE TO BACT. The owner or operator may demonstrate that the emissions unit's control technology is comparable to BACT for purposes of sub. (3)(a) according to either par. (a) or (b). Paragraph (c) specifies the time for making this comparison.

(a) *Comparison to previous BACT and LAER determinations*. The administrator maintains an on-line data base of previous determinations of RACT, BACT and LAER in the RACT/BACT/LAER clearinghouse (RBLC). The emissions unit's control technology is presumed to be comparable to BACT if

it achieves an emission limitation that is equal to or better than the average of the emission limitations achieved by all the sources for which a BACT or LAER determination has been made within the preceding 5 years and entered into the RBLC, and for which it is technically feasible to apply the BACT or LAER control technology to the emissions unit. The department shall compare this presumption to any additional BACT or LAER determinations of which it is aware, and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period, to determine whether any presumptive determination that the control technology is comparable to BACT is correct.

(b) *The substantially-as-effective test*. The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as BACT. In addition, any other person may present evidence related to whether the control technology is substantially as effective as BACT during the public participation process required under sub. (7). The department shall consider any evidence presented on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as BACT.

(c) *Time of comparison.* 1. 'Emissions units with control technologies that are installed before the effective date of this subsection… [revisor insert date]'. The owner or operator of an emissions unit whose control technology is installed before the effective date of this subsection… [revisor insert date] may, at its option:

a. Demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to the BACT requirements that applied at the time the control technology was installed. If the control technology was installed before January 1, 2001, the control technology shall be compared to BACT requirements that applied on or after January 1, 2001.

b. Demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements. The expiration date of the clean unit designation will depend on which option the owner or operator uses, as specified in sub. (6).

2. 'Emissions units with control technologies that are installed after the effective date of this subsection… [revisor insert date]'. The owner or operator shall demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements.

(5) EFFECTIVE DATE OF THE CLEAN UNIT DESIGNATION. The effective date of an emissions unit's clean unit designation, that is, the date on which the owner or operator may begin to use the clean unit test to determine whether a project involving the emissions unit is a major modification, is the date that the emissions unit's air pollution control technology is placed into service, or the date that the permit required by sub. (7) is issued, whichever is later.

(6) CLEAN UNIT EXPIRATION. If the owner or operator demonstrates that the emission limitation achieved by the emissions unit's control technology is comparable to the BACT requirements that applied at the time the control technology was installed, the clean unit designation expires 10 years from the date that the control technology was installed. If the control technology was installed before January 1, 2001, and the control technology was found to be comparable to BACT requirements of January 1, 2001, the clean unit designation expires on January 1, 2011. For all other emissions units, the clean unit designation expires 10 years from the effective date of the clean unit designation, as determined according to sub. (5). In addition, for all emissions units, the clean unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in sub. (9).

(7) PROCEDURES FOR DESIGNATING EMISSIONS UNITS AS CLEAN UNITS. The department shall designate an emissions unit a clean unit only by issuing a permit through ch. NR 406. The permit shall also meet the requirements in sub. (8).

(8) REQUIRED PERMIT CONTENT. The permit required by sub. (7) shall include the terms and conditions in pars. (a) to (f). The terms and conditions shall be incorporated into the source's operation permit in accordance with the provisions of ch. NR 407 no later than when the operation permit is renewed. The terms and conditions are as follows:

(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the air contaminants for which the clean unit designation applies.

(b) If the effective date of the clean unit designation is not known when the department issues the permit, e.g., because the air pollution control technology is not yet in service, the permit shall describe the event that will determine the effective date, e.g., the date the control technology is placed into service. Once the effective date is known, the owner or operator shall notify the department of the exact date. This specific effective date shall be added to the source's operation permit at the first opportunity, such as a revision, reopening or renewal of the operation permit for any reason, whichever comes first, but in no case later than the next renewal.

(c) If the expiration date of the clean unit designation is not known when the department issues the permit, e.g., because the air pollution control technology is not yet in service, the permit shall describe the event that will determine the expiration date, e.g., the date the control technology is placed into service. Once the expiration date is known, the owner or operator shall notify the department of the exact date. The expiration date shall be added to the source's operation permit at the first opportunity, such as a revision, reopening or renewal of the operation permit for any reason, whichever comes first, but in no case later than the next renewal.

(d) All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to BACT, and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT, e.g., possibly the emissions unit's capacity or throughput.

(e) Monitoring, recordkeeping and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its clean unit designation under sub. (9).

(f) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the

consequences of failing to do so, as presented in sub. (9).

(9) MAINTAINING THE CLEAN UNIT DESIGNATION. To maintain the clean unit designation, the owner or operator shall conform to all the restrictions listed in pars. (a) to (e). This subsection applies independently to each air contaminant for which the department has designated the emissions unit a clean unit. Failing to conform to the restrictions for one air contaminant affects the clean unit designation only for that air contaminant. The restrictions are as follows:

(a) The clean unit shall comply with the emission limitations and work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to BACT.

(b) The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to BACT, e.g., possibly the emissions unit's capacity or throughput.

(d) The clean unit shall comply with any terms and conditions in the operation permit related to the unit's clean unit designation.

(e) The clean unit shall continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, the clean unit designation ends.

(10) NETTING AT CLEAN UNITS. Emissions changes that occur at a clean unit may not be included in calculating a significant net emissions increase, that is, may not be used in a "netting analysis" unless the emission changes occur before the effective date of this subsection… [revisor insert date] or after the clean unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a clean unit. However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, the owner or operator may generate a credit for the difference between the

level that qualified the unit as a clean unit and the emissions unit's new emission limitation if the reductions are surplus, quantifiable and permanent. For purposes of generating offsets, the reductions shall also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

[Drafter's note: The Department seeks comment on the following pars. (a) to (c) in regard to the process that should be used to evaluate clean unit designation in the event that the area in which the clean unit is located in is redesignated from attainment to nonattainment. One or more of these provisions, or some variation of pars. (a) to (c) may be included in the final version of the regulation.]

(11) EFFECT OF REDESIGNATION ON THE CLEAN UNIT DESIGNATION. (a) The clean unit designation expires 6 months from the date that an area in which the clean unit is located is redesignated from attainment or unclassifiable to nonattainment, unless the owner or operator demonstrates to the satisfaction of the department that the clean unit meets a LAER level of control. Thereafter, the unit may not be requalified as a clean unit unless the unit is determined to meet LAER through the permitting procedures specified under s. NR 408.12(7).

(b) When an area in which the clean unit is located is redesignated from attainment or unclassifiable to nonattainment, the clean unit designation is not affected by any redesignation. However, any project at the clean unit resulting in a significant net emissions increase shall be offset under the provisions s. NR 408.06.

(c) When an area in which the clean unit is located is redesignated from attainment or unclassifiable to nonattainment, the clean unit designation may be reevaluated by department in the preparation of its attainment plan.

(d) Redesignation of an area in which the clean unit is located from nonattainment to attainment does not affect the clean unit designation.

NR 405.20 Pollution control project (PCP) exclusion procedural requirements. (1)

APPLICABILITY. The provisions of this section apply to an activity or project at an existing emissions unit located at a major stationary source for the purposes of reducing emissions of from the unit. The owner or operator of a major stationary source has the option of using this section to determine whether emission increases of collateral air contaminants resulting from the activity or project is a major modification.

(2) Before an owner or operator begins actual construction of a PCP, the owner or operator shall either submit a notice to the department if the project is listed in s. NR 405.02 (24m)(a) to (f), or if the project is not listed in s. NR 405.02 (24m)(a) to (f), shall submit a permit application and obtain approval to use the PCP exclusion from the department consistent with the requirements in sub. (6). Regardless of whether the owner or operator submits a notice or a permit application, the project shall meet the requirements in sub. (3), and the notice or permit application shall contain the information required in sub. (4).

(3) Any project that relies on the PCP exclusion shall meet both of the following requirements:

(a) *Environmentally beneficial analysis*. The environmental benefit from the emissions reductions of air contaminants regulated under the act shall outweigh the environmental detriment of emissions increases in air contaminants regulated under the act. A statement that a technology from s. NR 405.02(24m)(a) to (f) is being used shall be presumed to satisfy this requirement.

(b) *Air quality analysis*. The emissions increases from the project will not cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality related value, such as visibility, that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(4) The owner or operator shall include all of the following information in the notice or permit application regarding the PCP sent to the department:

(a) A description of the project.

(b) The potential emissions increases and decreases of any air contaminant regulated under the act and the projected emissions increases and decreases that will result from the project, and a copy of the environmentally beneficial analysis required by sub. (3)(a).

(c) A description of monitoring and recordkeeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods shall be sufficient to meet the requirements in s. NR 407.09(4).

(d) A certification that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by sub. (3)(a) and (b), with information submitted in the notice or permit application, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral air contaminants.

(e) Demonstration that the PCP will not have an adverse air quality impact, e.g., modeling, screening level modeling results, or a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise as required by sub. (3)(b). An air quality impact analysis is not required for any air contaminant that will not experience a significant emissions increase as a result of the project.

(5) The owner or operator may begin actual construction of the project or projects listed in s. NR 405.02(24m)(a) to (f) immediately after notice is sent to the department. The owner or operator shall respond to any requests by the department for additional information that the department determines is necessary to evaluate the suitability of the project for the PCP exclusion. If the department determines that the project will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality related value, such as visibility, that has been identified for a federal class I area by a federal land manager and for which information is available to the general public,

the owner or operator shall be liable for any violations that may have occurred as a result of commencing with the project. If the department does not respond to notices filed under this subsection within 21 days, the owner or operator may presume that the department has determined that the project will not cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality related value, such as visibility, that has been identified for a federal class I area by a federal land manager.

(6) Before an owner or operator may begin actual construction of a PCP project that is not listed in s. NR 405.02 (24m)(a) to (f), the project shall be approved by the department and recorded in a construction permit under issued ch. NR 406 or an operation permit issued under ch. NR 407. This includes the requirement that the department provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a 30-day period for the public and the administrator to submit comments. The department shall address all material comments received by the end of the public comment period before taking final action on the permit.

(7) Upon installation of the PCP, the owner or operator shall comply with the following operational requirements:

(a) *General duty*. The owner or operator shall operate the PCP consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by sub. (3)(a) and (b), with information submitted in the notice or permit application required by sub. (4), and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(b) *Recordkeeping*. The owner or operator shall maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in par. (a).

(c) *Permit requirements*. The owner or operator shall comply with any provisions in the construction permit or operation permit related to use and approval of the PCP exclusion.

(d) *Generation of emission reduction credits*. Emission reductions created by a PCP may not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the PCP exclusion, e.g., taking an operational restriction on the hours of operation. The owner or operator may generate a credit for the difference between the level of reduction which was used to qualify for the PCP exclusion and the new emission limitation if the reductions are surplus, quantifiable and permanent if the additional reduction was not also approved by the department as a PCP. For purposes of generating offsets, the reductions shall also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

NR 405.21 Actuals PALs. (1) APPLICABILITY. (a) The department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets all of the requirements in this section. The term "PAL" shall mean "actuals PAL" throughout this section.

(b) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level meets the requirements in this section and complies with the PAL permit:

1. Is not a major modification for the PAL air contaminant.

2. Does not have to be approved under this chapter.

3. Is not subject to the provisions in s. NR 405.16(2), if the owner or operator elects to remove previously elected permit conditions under sub. (6)(e)1.

(c) Except as provided under par. (b)3., a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations and work practice requirements that were

established prior to the effective date of the PAL.

(2) DEFINITIONS. The definitions in pars. (a) to (k) are used for the purpose of developing and implementing actuals PALs consistent with this section. When a term is not defined in the subsection, it shall have the meaning given in s. NR 405.02.

(a) "Actuals PAL" means a PAL based on the baseline actual emissions of all emissions units at the source, that emit or have the potential to emit the PAL air contaminant, except units that have been designated as clean units under s. NR 405.18 or 405.19.

(b) "Allowable emissions" has the meaning given in s. NR 405.02(2), except as this definition is modified according to both of the following:

1. The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

2. An emissions unit's potential to emit shall be determined using the definition in s. NR 405.02(25), except that the words "or enforceable as a practical matter" should be added after "federally enforceable".

(c) "Major emissions unit" means either of the following:

1. Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL air contaminant in an attainment area.

2. Any emissions unit that emits or has the potential to emit the PAL air contaminant in an amount that is equal to or greater than the major source threshold for the PAL air contaminant as defined by the act for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(d) "PAL effective date" generally means the date of issuance of the PAL permit. However, the

PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL air contaminant.

(e) "PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

(f) "PAL major modification" means, notwithstanding s. NR 405.02(21) and (24), any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL air contaminant at a level equal to or greater than the PAL.

(g) "PAL permit" means the construction permit or the operation permit issued by the department that establishes a PAL for a major stationary source.

(h) "PAL air contaminant" means the air contaminant for which a PAL is established.

(i) "Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this section.

(j) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL air contaminant in an amount that is equal to or greater than the significant level, as defined in s. NR 405.02(27) or in the act, whichever is lower, for that PAL air contaminant, but less than the amount that would qualify the unit as a major emissions unit.

(k) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL air contaminant in an amount less than the significant level for that PAL air contaminant, as defined in s. NR 405.02(27) or in the act, whichever is lower.

(3) PERMIT APPLICATION REQUIREMENTS. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit all of the following information to the department for approval:

(a) A list of all emissions units at the source designated as small, significant or major based on

their potential to emit as well as those units that have been designated or are proposed to be designated as clean units, as defined by s. NR 405.02(8u). In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations or work practices apply to each unit that is not designated as a clean unit.

(b) Calculations of the baseline actual emissions with supporting documentation. Baseline actual emissions shall include emissions associated not only with operation of the unit, but also emissions associated with planned startups and shutdowns.

(c) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by sub. (13)(a).

(4) GENERAL REQUIREMENTS FOR ESTABLISHING PALS. (a) The department may establish a PAL at a major stationary source if, at a minimum, all of the following requirements are met:

1. The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source, excluding those units that have been designated as clean units. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL. For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

2. The PAL shall be established in a PAL permit that meets the public participation requirements in sub. (5).

3. The PAL permit shall contain all the requirements of sub. (7).

4. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units

that emit or have the potential to emit the PAL air contaminant at the major stationary source, excluding those emissions units that have been designated as clean units.

5. Each PAL shall regulate emissions of only one air contaminant.

6. Each PAL shall have a PAL effective period of 10 years.

7. The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping and reporting requirements provided in subs. (12) to (14) for each emissions unit under the PAL through the PAL effective period.

(b) At no time during or after the PAL effective period are emissions reductions of a PAL air contaminant that occur during the PAL effective period creditable as decreases for purposes of offsets under ch. NR 408 unless the level of the PAL is reduced by the amount of the emissions reductions and the reductions would be creditable in the absence of the PAL.

(5) PUBLIC PARTICIPATION REQUIREMENTS FOR PALS. PALs for existing major stationary sources shall be established, renewed or increased, through a procedure that is consistent with s. NR 405.15. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department shall address all material comments before taking final action on the permit.

(6) SETTING THE 10-YEAR ACTUALS PAL LEVEL. (a) The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions, as defined in s. NR 405.02(2m), of the PAL air contaminant for each emissions unit at the source that has not been designated as a clean unit; plus an amount equal to the applicable significant level for the PAL air contaminant under s. NR 405.02(27) or the act, whichever is lower.

(b) When establishing the actuals PAL level, for a PAL air contaminant, only one consecutive 24-month period may be used to determine the baseline actual emissions for all existing emissions units. The same consecutive 24-month period shall be used for each air contaminant to be covered under a PAL at the

major stationary source, unless alternative consecutive 24-month periods have been approved by the department.

(c) Emissions associated with units that were permanently shutdown after the 24-month period established under par. (b) shall be subtracted from the PAL level.

(d) Emissions from units on which actual construction began after the 24-month period established under par. (b) shall be added to the PAL level as follows:

1. In an amount equal to the potential to emit of the unit if the unit has operated less than 24 months.

2. In an amount equal to 12-consectutive months of actual emissions from the unit if the unit has operated 24 or more months.

(e) Emissions from units that had previously elected permit conditions to avoid permitting under this chapter or ch. NR 408 shall be included in the PAL under one of the following:

1. If the owner or operator elects to remove previously elected permit conditions when including the unit in the PAL, emissions shall be adjusted to an amount comparable to BACT levels, established at the time of the PAL application.

2. If the owner or operator elects to maintain the previously elected permit conditions under the PAL, baseline actual emissions shall be used.

(f) The department shall specify a reduced PAL level, in tons/yr, in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirements that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of the unit.

(7) CONTENTS OF THE PAL PERMIT. The PAL permit shall contain, at a minimum, all of the

following information:

(a) The PAL air contaminant and the applicable source-wide emission limitation in tons per year.

(b) The PAL permit effective date and the expiration date of the PAL.

(c) A specification that if a major stationary source owner or operator applies to renew a PAL in accordance with sub. (10) before the end of the PAL effective period, the PAL does not expire at the end of the PAL effective period, but shall remain in effect until a revised PAL permit is issued by the department.

(d) A requirement that emission calculations for compliance purposes include emissions from planned startups and shutdowns.

(e) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of sub. (9).

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by sub. (13)(a).

(g) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under sub. (12).

(h) A requirement to retain the records required under sub. (13) on site. Records may be retained in an electronic format.

(i) A requirement to submit the reports required under sub. (14) by the required deadlines.

(j) Any other requirements that the department deems necessary to implement and enforce the PAL.

(8) PAL EFFECTIVE PERIOD AND REOPENING OF THE PAL PERMIT. (a) *PAL effective period*. The department shall specify a PAL effective period of 10 years.

(b) *Reopening of the PAL permit.* 1. During the PAL effective period, the department shall reopen

the PAL permit to do any of the following:

a. Correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.

b. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under ch. NR 408.

c. Revise the PAL to reflect an increase in the PAL as provided under sub. (11).

d. Revise the PAL to reflect a decrease in the PAL due to an emissions unit previously covered by the PAL being newly designated as a clean unit.

2. The department may reopen the PAL permit to do any of the following:

a. Reduce the PAL to reflect newly applicable federal requirements, for example, NSPS, with compliance dates after the PAL effective date.

b. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the state may impose on the major stationary source.

c. Reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an AQRV that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

3. Except for the permit reopening in subd. 1.a. for the correction of typographical or calculation errors that do not increase the PAL level, all reopenings shall be carried out in accordance with the public participation requirements of sub. (5).

(9) EXPIRATION OF A PAL. Any PAL that is not renewed in accordance with the procedures in sub. (10) shall expire at the end of the PAL effective period, and the following requirements shall apply:

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following

procedures:

1. Within the time frame specified for PAL renewals in sub. (10)(b), the major stationary source shall submit a proposed allowable emission limitation for each emissions unit or each group of emissions units, if a grouping is more appropriate as decided by the department by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under sub. (10)(e), the distribution shall be made as if the PAL had been adjusted.

2. Based upon the information submitted under subd. 1., the department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(b) Each emissions unit or group of emissions units shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems, such as source testing, emission factors, etc., other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(c) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under par. (a)2., the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(d) Any physical change or change in the method of operation at the major stationary source shall be subject to the requirements of this chapter if the change meets the definition of major modification in s. NR 405.02(21).

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements, BACT, RACT, NSPS, etc., that may have applied either during the PAL

effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to s. NR 405.16(2), but were eliminated by the PAL in accordance with the provisions in sub. (1)(b)3.

(10) RENEWAL OF A PAL. (a) The department shall follow the procedures specified in sub. (5) in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During the public review, any person may propose a PAL level for the source for consideration by the department.

(b) The owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator submits a complete application to renew the PAL within this time period, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) The application to renew a PAL permit shall contain all of the following information:

1. The information required in sub. (3)(a) to (c).

2. A proposed PAL level.

3. The sum of the potential to emit of all emissions units under the PAL, with supporting documentation.

4. Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(d) In determining whether and how to adjust the PAL, the department shall consider the options outlined in subds. 1. and 2. However, in no case may any adjustment fail to comply with subd. 3. The adjustment option, and requirements, are as follows:

1. If the emissions level calculated in accordance with sub. (6) is equal to or greater than 80% of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in subd. 2.

2. The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

3. Notwithstanding subds. 1. and 2., if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source. The department may not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of sub. (11).

(e) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for the requirement, the PAL shall be adjusted at the time of PAL permit renewal or operation permit renewal, whichever occurs first.

(11) INCREASING A PAL DURING THE PAL EFFECTIVE PERIOD. (a) The department may increase a PAL emission limitation only if the major stationary source complies with all of the following provisions:

1. The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. The application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

2. As part of this application, the major stationary source owner or operator shall demonstrate that

the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units under the PAL assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units, exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. The assumed control level for that emissions unit shall be equal to the level of BACT or LAER that currently applies to that emissions unit.

3. The owner or operator obtains a major NSR permit for all emissions units identified in subd. 1., regardless of the magnitude of the emissions increase resulting from them. These emissions units shall comply with any emissions requirements resulting from the major NSR process, for example, BACT, even though they have also become subject to the PAL or continue to be subject to the PAL.

4. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL air contaminant.

(b) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units, assuming application of BACT equivalent controls as determined in accordance with par. (a)2., plus the sum of the baseline actual emissions of the small emissions units and excluding any clean units.

(c) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of sub. (5).

(12) MONITORING REQUIREMENTS FOR PALS. (a) 1. Each PAL permit shall contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the

PAL air contaminant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit shall be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by any authorized system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

2. The PAL monitoring system shall employ one or more of the 4 general monitoring approaches meeting the minimum requirements in par. (b) and shall be approved by the department.

3. Notwithstanding subd. 2., the owner or operator may also employ an alternative monitoring approach that meets subd. 1. if approved by the department.

4. Failure to use a monitoring system that meets the requirements of this subsection renders the PAL invalid.

(b) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in pars. (c) to (i):

1. Mass balance calculations for activities using coatings or solvents.

2. CEMS.

3. CPMS or PEMS.

4. Emission factors.

(c) An owner or operator using mass balance calculations to monitor PAL air contaminant emissions from activities using coating or solvents shall do all of the following:

1. Provide a demonstrated means of validating the published content of the PAL air contaminant that is contained in or created by all materials used in or at the emissions unit.

2. Assume that the emissions unit emits all of the PAL air contaminant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process.

3. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a

range of pollutant content from the material, use the highest value of the range to calculate the PAL air contaminant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(d) An owner or operator using CEMS to monitor PAL air contaminant emissions shall ensure that the CEMS does both of the following:

1. Complies with applicable performance specifications found in 40 CFR part 60, appendix B incorporated by reference in s. NR 484.04(21).

2. Samples, analyzes and records data at least every 15 minutes while the emissions unit is operating.

(e) An owner or operator using CPMS or PEMS to monitor PAL air contaminant emissions shall ensure that the CPMS or PEMS does both of the following:

1. Is based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL air contaminant emissions across the range of operation of the emissions unit.

2. Samples, analyzes and records data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(f) An owner or operator using emission factors to monitor PAL air contaminant emissions shall do all of the following:

1. Adjust all emission factors, if appropriate, to account for the degree of uncertainty or limitations in the factors' development.

2. Operate the emissions unit within the designated range of use for the emission factor, if applicable.

3. If technically practicable, for a significant emissions unit that relies on an emission factor to calculate PAL air contaminant emissions, conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the department determines that testing is not

required.

(g) A source owner or operator shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during the periods is specified in the PAL permit.

(h) Notwithstanding the requirements in pars. (c) to (g), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL air contaminant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance do one of the following:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at the operating points.

2. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL air contaminant emissions is a violation of the PAL.

(i) Re-validation. All data used to establish the PAL air contaminant shall be re-validated through performance testing or other scientifically valid means approved by the department under the methods and frequency required under chs. NR 400 to 499.

(13) RECORDKEEPING REQUIREMENTS. (a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of the record.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records, for the duration of the PAL effective period plus 5 years:

1. A copy of the PAL permit application and any applications for revisions to the PAL.

2. Each annual certification of compliance pursuant to s. NR 439.03(8) and the data relied on in certifying the compliance.

(14) REPORTING AND NOTIFICATION REQUIREMENTS. The owner or operator shall submit the following reports and information to the department in accordance with the operation permit program:

(a) *Semi-annual report*. The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain all of the following information:

1. The identification of owner and operator and the permit number.

2. Total annual emissions, in tons/year, based on a 12-month rolling total for each month in the reporting period recorded pursuant to sub. (13)(a).

3. All data relied upon, including any quality assurance or quality control data, in calculating the monthly and annual PAL air contaminant emissions.

4. A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

5. The number, duration and cause of any deviations or monitoring malfunctions other than the time associated with zero and span calibration checks, and any corrective action taken.

6. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the air contaminant or the number determined by method included in the permit, as provided by sub. (12)(g).

7. A signed statement by the responsible official certifying the truth, accuracy and completeness of the information provided in the report.

(b) *Deviation report*. A report shall be promptly submitted for any deviation or exceedance of the

PAL requirements, including periods where no monitoring is available. A report submitted pursuant to s. NR 439.03 shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits in s. NR 439.03. The reports shall contain all of the following information:

1. The identification of owner and operator and the permit number.

2. The PAL requirement that experienced the deviation or that was exceeded.

3. Emissions resulting from the deviation or the exceedance.

4. A signed statement by the responsible official certifying the truth, accuracy and completeness of the information provided in the report.

(c) *Re-validation results*. The results of any re-validation test or method shall be submitted within 3 months after completion of the test or method.

(15) TRANSITION REQUIREMENTS. (a) The department may not issue a PAL that does not comply with the requirements of this section after the effective date of this subsection… [revisor insert date].

(b) The department may supersede any PAL which was established prior to the effective date of this subsection… [revisor insert date] with a PAL that complies with the requirements of this section.

SECTION 15. NR 408.02(1) is amended to read:

NR 408.02(1) "Actual emissions" means the actual rate of emissions of a ~~pollutant~~ regulated NSR air contaminant from an emissions unit, as determined ~~as follows:~~in accordance with pars. (a) to (c), except that this definition does not apply for calculating whether a significant emissions increase has occurred as a result of a modification of an existing emissions unit or group of existing emissions units, or for establishing a PAL under s. NR 408.14. Instead, subs. (2m) and (28s) shall apply for those purposes.

(a) Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a ~~2 year~~ consecutive 24-month period which precedes the

particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates and types of materials processed, stored or combusted during the selected time period. ~~Where the implementation plan for an area is based on allowable emissions, or where actual emissions exceed allowable emissions, the department may presume that the source specific allowable emissions for the unit are equivalent to the actual emissions of the unit.~~

(b) For any emissions unit~~, other than an electric utility steam generating unit as specified in par. (c),~~ which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(c) ~~For an electric utility steam generating unit, other than a new unit or the replacement of an existing unit, actual emissions of the unit following a physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the department, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the department if it determines a period to be more representative of normal source post-change operations.~~The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

SECTION 16. NR 408.02(2m) is created to read:

NR 408.02(2m) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR air contaminant, as determined in accordance with the following:

(a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the air contaminant during any consecutive

24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

1. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with planned startups and shutdowns.

2. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

3. When a project involves multiple emissions units, only one consecutive 24-month period may be used to determine the baseline actual emissions for the emissions units being changed.

4. The same consecutive 24-month period shall be used for each regulated NSR air contaminant reviewed under the project unless an alternative consecutive 24-month period is allowed by the department.

5. The average rate may not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subd. 2.

(b) For an existing emissions unit, other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the air contaminant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required under ch. NR 406, whichever is earlier.

1. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with planned startup and shutdowns.

2. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

3. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had the major stationary source been required to comply with the limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR part 63, the baseline actual emissions need only be adjusted if the state has taken credit for the emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of s. NR 408.06(9).

4. When a project involves multiple emissions units, only one consecutive 24-month period may be used to determine the baseline actual emissions for the emissions units being changed.

5. The same consecutive 24-month period shall be used for each regulated NSR air contaminant reviewed under the project unless an alternative consecutive 24-month period is allowed by the department.

6. The average rate may not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subds. 2. and 3.

(c) For a new emissions unit or replacement unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of the unit shall equal zero; and thereafter, shall equal either:

1. The unit's potential to emit if the unit has operated for less than 24 months.

2. An amount equal to 12-consectutive months of actual emissions from the unit if the unit has operated for 24 or more months.

(d) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in par. (a), for other existing emissions units in accordance with the procedures contained in par. (b), and for a new emissions unit or replacement unit in accordance with the procedures contained in par. (c).

SECTION 17. NR 408.02(4) and (5) are amended to read:

NR 408.02(4) "Best available control technology" or "BACT" means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR air contaminant ~~subject to regulation under the act (42 USC 7401 to 7671q)~~ which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems and techniques, including ~~clean fuels,~~ fuel cleaning or treatment or innovative fuel combustion techniques for control of the air contaminant. In no event may application of best available control technology result in emissions of any air contaminant which would exceed the emissions allowed by any applicable standard under chs. NR 440 and 446 to 449 and 40 CFR parts 60 and 61. ~~Emissions from any source utilizing clean fuels or any other means to comply with this subsection may not be allowed to increase above the levels that would have been required prior to enactment of the 1990 clean air act amendments on November 15, 1990.~~ If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. The standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of a design, equipment, work practice or operation, and shall provide for compliance by means which

achieve equivalent results.

(5) "Building, structure, facility or installation" means all of the ~~air contaminant emitting~~ activities which emit or may emit a regulated NSR air contaminant, which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person, or persons under common control, except the activity of any vessel. Air contaminant sources shall be considered as part of the same industrial grouping if they are classified under the same 2-digit major group as described in the Standard Industrial Classification Manual, 1987, incorporated by reference in s. NR 484.05.

SECTION 18. NR 408.02(7m) is created to read:

NR 408.02(7m) "Clean unit" means any emissions unit that has been issued a permit under this chapter or ch. NR 405 that requires compliance with BACT or LAER, is complying with the BACT or LAER requirements, and qualifies as a clean unit under s. NR 408.11; or any emissions unit that has been designated by the department as a clean unit, based on the criteria in s. NR 408.12(3)(a) to (d).

SECTION 19. NR 408.02(11) is amended to read:

NR 408.02(11) "Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition or modification of an emissions unit, which would result in a change in ~~actual~~ emissions.

SECTION 20. NR 408.02(11e), (11m) and (11s) are created to read:

NR 408.02(11e) "Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this chapter, to sample, condition if applicable, analyze and provide a record of emissions on a continuous basis.

(11m) "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the air contaminant mass emissions rate in terms of mass per unit of time.

(11s) "Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this chapter, to monitor process and control device operational parameters, for example, control device secondary voltages and electric currents, and other information, for example, gas flow rate, O_2 or CO_2 concentrations, and to record average operational parameter values on a continuous basis.

SECTION 21. NR 408.02(13) is amended to read:

NR 408.02(13) "Emissions unit" means any part of a stationary source~~, including point and area sources,~~ which emits or would have the potential to emit any ~~pollutant, including fugitive emissions, subject to regulation under the act or under chs. NR 400 to 499~~ regulated NSR air contaminant and includes an electric steam generating unit. For purposes of this chapter, there are 2 types of emissions units described as follows:

(a) A new emissions unit is any emissions unit which is or will be newly constructed and which has existed for less than 2 years from the date the emissions unit first operated.

(b) An existing emissions unit is any emissions unit that does not meet the requirements in par. (a).

SECTION 22. NR 408.02(13m) is created to read:

NR 408.02(13m) "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over the lands.

SECTION 23. NR 408.02(20) is repealed and recreated to read:

NR 408.02(20) "Major modification" means any physical change in, or change in the method of operation of a major source that would result in a significant emissions increase of a regulated NSR air contaminant and a significant net emissions increase of that air contaminant from the major stationary source. Further:

(a) Any physical change in, or change in the method of operation of a major source of VOCs located in an extreme nonattainment area for ozone which results in any increase in emissions of VOCs from any discrete operation, emissions unit or other pollutant emitting activity at the source shall be considered a major modification for ozone.

(b) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source, that is considered significant for VOCs shall be considered significant for ozone.

(c) For the purpose of applying the requirements of s. NR 408.03(6) to major sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, any significant net emissions increase of nitrogen oxides is considered significant for ozone, in addition to any separate requirements for nitrogen oxides.

(d) For the purposes of applying the requirements of s. NR 408.03(5) to major sources of PM_{10} precursors, any significant net emissions increase of a PM_{10} precursor is considered significant for PM_{10}.

(e) A physical change or change in the method of operation does not include:

1. Routine maintenance, repair and replacement.

2. Use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Federal Energy Supply and Environmental Coordination Act of 1974 (15 USC 791 to 798), or by reason of a natural gas curtailment plan pursuant to the Federal Power Act (16 USC 791a to 828c).

3. Use of an alternative fuel by reason of an order or rule under section 125 of the act (42 USC 7425).

4. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from

municipal solid waste.

5. Use of an alternative fuel or raw material by a stationary source which:

a. The source was capable of accommodating before December 21, 1976, unless the change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to this chapter or ch. NR 405 or 406 or under an operation permit issued pursuant to ch. NR 407.

b. The source is approved to use an alternative fuel or raw material under any permit issued under this chapter or ch. NR 405, 406 or 407.

6. An increase in the hours of operation or in the production rate, unless the change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to ch. NR 405 or 406 or this chapter, or under operation permits issued pursuant to ch. NR 407.

7. Any change in ownership at a stationary source.

8. The addition, replacement or use of a PCP at an existing emissions unit meeting the requirements of s. NR 408.13. A replacement control technology shall provide more effective emissions control than that of the replaced control technology to qualify for this exclusion.

9. The installation, operation, cessation or removal of a temporary clean coal technology demonstration project, provided that the project complies with both of the following:

a. The state implementation plan.

b. Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(f) This definition does not apply with respect to a particular regulated NSR air contaminant when the major stationary source is complying with the requirements of s. NR 408.14 for a PAL for that air contaminant. Instead the definition in s. NR 408.14(2)(f) shall apply.

SECTION 23A. NR 408.02(21)(a)1.(intro.) is amended to read:

NR 408.02(21)(a)1.(intro.) Any stationary source of air ~~pollutants~~ contaminants which emits or has the potential to emit 100 tons per year (tpy) or more of any ~~pollutant~~ air contaminant for which the area in which the source is located is nonattainment, except that lower emissions thresholds shall apply as follows to any stationary source for which a complete construction permit application was submitted or was required to be submitted after November 15, 1992:

SECTION 24. NR 408.02(23) is repealed and recreated to read:

NR 408.02(23) (a) "Net emissions increase" means, with respect to any regulated NSR air contaminant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

1. Any increase in emissions from a particular physical change or change in the method of operation at a stationary source calculated pursuant to sub. (32m)(a) to (e).

2. Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in sub. (2m).

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the following:

1. The date 5 years before construction on the particular change commences.

2. The date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if all of the following are satisfied:

1. It occurs within a reasonable period to be specified by the department.

2. The department has not relied on it in issuing a permit for the source under this chapter and the

permit is in effect when the increase in actual emissions from the particular change occurs.

3. The increase or decrease in emissions did not occur at a clean unit, except as provided in ss. NR 408.11(8) and 408.12(10).

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

1. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions.

2. It is enforceable as a practical matter at and after the time that actual construction on the particular change begins.

3. The department has not relied on it in issuing any permit under ch. NR 405, 406, 407 or this chapter or the state has not relied on it in demonstrating attainment or reasonable further progress.

4. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

5. The decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a clean unit under s. NR 408.11. Once an emissions unit has been designated as a clean unit, the owner or operator may not later use the emissions reduction from the air pollution control measures that the clean unit designation is based on in calculating the net emissions increase for another emissions unit, i.e., may not use that reduction in a "netting analysis" for another emissions unit. However, any new emissions reductions that were not relied upon in a PCP excluded pursuant to s. NR 408.13 or for the clean unit designation are creditable to the extent they meet the requirements in s. NR 408.13(7)(d) for the PCP and s. NR 408.11(8) or 408.12(10) for a clean unit.

(f) An emissions increase that results from a physical change at a source occurs when the

emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

SECTION 24A. NR 408.02(24m) and (25m) are created to read:

NR 408.02(24m) "Nonattainment major new source review" or "NSR" program means a major source preconstruction permit program that has been approved by the administrator and incorporated into the state implementation plan to implement the requirements of 40 CFR part 51, appendix S, Sections I to VI. Any permit issued under the a program is a major NSR permit.

(25m) "Planned startup or shutdown" means a startup or shutdown which the owner or operator of a process, emission unit or emission control device intends to occur on a specific date or at a specific time. Startup and shutdowns which are caused in whole or by part by unplanned events such as malfunctions are not planned startups or shutdowns even though the startups or shutdowns may be included in a source's malfunction prevention and abatement plan or any other similar emission reduction plan.

SECTION 25. NR 408.02(27) is repealed and recreated to read:

NR 408.02(27) "Pollution control project" or "PCP" means any activity, set of work practices or project, including pollution prevention, undertaken at an existing emissions unit that reduces emissions of air contaminants from the unit. Qualifying activities or projects can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects listed in pars. (a) to (f) are presumed to be environmentally beneficial pursuant to s. NR 405.13(2)(a). Projects not listed may qualify for a case-specific PCP exclusion pursuant to the requirements of s. NR 408.13(3) and (6).

(a) Conventional or advanced flue gas desulfurization or sorbent injection for control of SO_2.

(b) Electrostatic precipitators, baghouses, high efficiency multiclones or scrubbers for control of particulate matter or other air contaminants.

(c) Flue gas recirculation, low-NO_X burners or combustors, selective noncatalytic reduction, selective catalytic reduction, low emission combustion, for IC engines, and oxidation and absorption catalyst for control of NO_X.

(d) Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this paragraph, "hydrocarbon combustion flare" means either a flare used to comply with an applicable NSPS or MACT standard including uses of flares during startup, shutdown or malfunction permitted under an applicable standard, or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide.

(e) Activities or projects undertaken to accommodate switching or partially switching to an inherently less polluting fuel, to be limited to the following fuel switches:

1. Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to 0.05% sulfur diesel, i.e., from a higher sulfur content #2 fuel or from #6 fuel, to CA 0.05% sulfur #2 diesel.

2. Switching from coal, oil or any solid fuel to natural gas, propane or gasified coal.

3. Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of ‘‘unclean’’ wood.

4. Switching from coal to #2 fuel oil with a maximum sulfur content of 0.5%.

5. Switching from high sulfur coal to low sulfur coal with a maximum sulfur content of 1.2%.

(f) Activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP),

including changes to equipment needed to accommodate the activity or project, that meet the requirements of subds. 1. and 2.

1. The productive capacity of the equipment is not increased as a result of the activity or project.

2. The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. To make this determination, the following procedures shall be used:

a. Determine the ODP of the substances by consulting 40 CFR part 82, subpart A, appendices A and B incorporated by reference into s. NR 484.04(29).

b. Calculate the replaced ODP weighted amount by multiplying the baseline actual usage, using the annualized average of any 24 consecutive months of usage within the past 10 years, by the ODP of the replaced ODS.

c. Calculate the projected ODP weighted amount by multiplying the projected annual usage of the new substance by its ODP.

d. If the value calculated in this subd. 2.b. is more than the value calculated in this subd. 2.c., the projected use of the new substance is lower, on an ODP weighted basis, than the baseline usage of the replaced ODS.

SECTION 26. NR 408.02(27m), (28e), (28j), (28m), (28s), (29m), (29s) and (32m) are created to read:

NR 408.02(27m) "Pollution prevention" means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air contaminants including fugitive emissions and other contaminants to the environment prior to recycling, treatment or disposal. Pollution prevention does not mean recycling, other than certain "in-process recycling" practices, energy recovery, treatment or disposal.

(28e) "Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters, for example, control device secondary

voltages and electric currents, and other information, for example, gas flow rate, O_2 or CO_2 concentrations, and calculate and record the mass emissions rate, for example, lb/hr, on a continuous basis.

(28j) "Prevention of significant deterioration permit" or "PSD permit" means a major source preconstruction permit issued under ch. NR 405.

(28m) "Project" means a physical change in, or change in method of operation of, an existing major stationary source.

(28s)(a) "Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR air contaminant in any one of the 10 years following the date the unit resumes regular operation after the project.

(b) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source shall do all of the following:

1. Consider all relevant information, including historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities and compliance plans under the approved state implementation plan.

2. Include fugitive emissions to the extent quantifiable and emissions associated with planned startups and shutdowns.

[Drafter's note: The department seeks comment on the use of an adjustment factor to project demand growth and methods for clarifying the method of use of this adjustment factor in projecting emissions as provided by the following subd. 3. After considering comments, the department will evaluate the ability to implement the use of the demand adjustment factor in a clear, consistent and certain manner through this regulation.]

3. Exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during

the consecutive 24-month period used to establish the baseline actual emissions under sub. (2m) and that are also unrelated to the particular project, including any increased utilization due to product demand growth. The owner or operator shall consider information prepared under subd. 1. when projecting increases in emissions due to product demand growth.

(c) In lieu of using the method in par. (b), the owner or operator may elect to use the emissions unit's potential to emit, in tons per year, as defined under sub. (28).

(29m) "Regulated NSR air contaminant" means all of the following:

(a) Nitrogen oxides or any volatile organic compounds.

(b) Any air contaminant for which a national ambient air quality standard has been promulgated.

(c) Any air contaminant that is a constituent or precursor of a general air contaminant listed under par. (a) or (b), provided that a constituent or precursor pollutant may only be regulated under this chapter or ch. NR 405 as part of regulation of the general air contaminant.

(29s) "Replacement unit" means an emissions unit for which all the criteria in pars. (a) to (d) are met. Actual emissions shall be used when determining credible emission reductions generated from shutting down the existing unit that is replaced.

(a) The emissions unit is a reconstructed unit within the meaning of s. NR 400.02(130) or the emissions unit completely takes the place of an existing emissions unit.

(b) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(c) The replacement does not change the basic design parameter or parameters of the process unit.

(d) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(32m) "Significant emissions increase" means, for a regulated NSR air contaminant, an increase in

emissions that is significant for that air contaminant. The following tests are used to determine whether a significant emissions increase will occur as a result of a project:

(a) *Actual-to-projected-actual applicability test for projects that only involve existing emissions units*. A significant emissions increase of a regulated NSR air contaminant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit, equals or exceeds the significant amount for that air contaminant.

(b) *Emission test for projects that only involve construction of a new emissions unit or units*. A significant emissions increase of a regulated NSR air contaminant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that air contaminant.

(c) *Emission test for projects that only involve replacement emissions unit or units*. A significant emissions increase of a regulated NSR air contaminant is projected to occur if the sum of the difference between the potential to emit of each replacement unit following completion of the project and the actual emissions of each emissions unit being replaced equals or exceeds the significant amount for that air contaminant.

(d) *Emission test for projects that involve clean units*. For a project that will be constructed and operated at a clean unit without causing the emissions unit to lose its clean unit designation, no emissions increase is deemed to occur.

(e) *Hybrid test for projects that involve multiple types of emissions units*. A significant emissions increase of a regulated NSR air contaminant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in pars. (a) to (c) as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that air contaminant. For example, if a project involves both an existing emissions unit and a clean unit, the

projected increase is determined by summing the values determined using the method specified in par. (a) for the existing unit and determined using the method specified in par. (d) for the clean unit.

SECTION 27. NR 408.06(10), (11) and (12) are created to read:

NR 408.06(10) Decreases in actual emissions resulting from the installation of add-on control technology or application of pollution prevention measures that were relied upon in designating an emissions unit as a clean unit or a project as a PCP may not be used as offsets.

(11) Decreases in actual emissions occurring at a clean unit may not be used as offsets, except as provided in ss. NR 408.11(8) and 408.12(10). Similarly, decreases in actual emissions occurring at a PCP may not be used as offsets, except as provided in s. NR 408.13(7)(d).

(12) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with this section shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

SECTION 28. NR 408.10(5) and (6) are created to read:

NR 408.10(5) The following specific provisions apply to projects at existing emissions units at a major stationary source, other than projects at a clean unit or at a source with a PAL, in circumstances where the owner or operator calculates the difference between projected actual emissions using a method specified in s. NR 405.02(28s)(b)1. to 3., prior to any demand growth adjustment under s. NR 405.02(28s)(b)3., and baseline actual emissions exceeds the level that is considered to be significant for the air contaminant:

(a) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of all of the following:

1. A description of the project.

2. Identification of the emissions unit or units whose emissions of a regulated NSR air contaminant could be affected by the project.

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR air contaminant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under s. NR 405.02(28s)(b)3. and an explanation why the amount was excluded, and any netting calculations, if applicable.

(b) Before beginning actual construction, the owner or operator shall provide a copy of the information in par. (a) to the department. Nothing in this paragraph shall be construed to require the owner or operator of the a unit to obtain any determination from the department before beginning actual construction.

(c) The owner or operator shall monitor the emissions of any regulated NSR air contaminant that could increase as a result of the project and that is emitted by any emissions unit identified in par. (b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 10 years following resumption of regular operations after the change.

(d) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under par. (c) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(e) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in par. (a), exceed the baseline actual emissions, as documented and maintained pursuant to par. (c), by a significant amount, as defined in s. NR 408.02(32) for that regulated NSR air contaminant, and if the emissions differ from the preconstruction projection that was provided to the department pursuant to

par. (b). The report shall be submitted to the department within 60 days after the end of the year. The report shall contain the following:

1. The name, address and telephone number of the major stationary source.

2. The annual emissions as calculated pursuant to par. (a)3.

3. Any other information that the owner or operator wishes to include in the report, e.g., an explanation as to why the emissions differ from the preconstruction projection.

(6) The owner or operator of the source shall make the information required to be documented and maintained pursuant to sub. (5) available for review upon request for inspection by the department or the general public.

SECTION 29. NR 408.11 to 408.14 are created to read:

NR 408.11 Clean unit test for emissions units that are subject to LAER. (1) APPLICABILITY. The provisions of this section apply to any emissions unit for which the department has issued a major NSR permit within the past 10 years. The owner or operator of a major stationary source has the option of using this section to determine whether emission increases at a clean unit are part of a project that is a major modification.

(2) GENERAL PROVISIONS FOR CLEAN UNITS. The provisions in pars. (a) to (e) apply to a clean unit.

(a) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation, as determined in accordance with sub. (4), and before the expiration date, as determined in accordance with sub. (5), will be considered to have occurred while the emissions unit was a clean unit.

(b) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER and the

project would not alter any physical or operational characteristics that formed the basis for the LAER determination as specified in sub. (6)(d), the emissions unit remains a clean unit.

(c) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER or the project would alter any physical or operational characteristics that formed the basis for the LAER determination as specified in sub. (6)(d), the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions, unless the unit re-qualifies as a clean unit pursuant to sub. (3)(c). If the owner or operator begins actual construction on the project without first applying to revise the emissions unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(d) A project that causes an emissions unit to lose its designation as a clean unit is subject to the applicability requirements of s. NR 408.02(32m)(a), (b), (c) and (e) as if the emissions unit was never a clean unit.

(e) For emissions units that meet the criteria in subds. 1. and 2., the BACT level of emissions reductions and work practice requirements shall satisfy the requirement for LAER in meeting the requirements for clean units under subs. (3) to (8), provided BACT was equivalent to LAER at the time of PSD permit issuance. For these emissions units, all requirements for the LAER determination under pars. (b) and (c) shall also apply to the BACT permit terms and conditions. In addition, the requirements of sub. (7)(a)2. do not apply to emissions units that qualify for clean unit status.

1. The emissions unit must have received a PSD permit within the last 10 years and the PSD permit must require the emissions unit to comply with BACT.

2. The emissions unit must be located in an area that was redesignated as nonattainment for the relevant pollutant or pollutants after issuance of the PSD permit and before the effective date of this subsection… [revisor insert date].

(3) QUALIFYING OR RE-QUALIFYING TO USE THE CLEAN UNIT APPLICABILITY

TEST. An emissions unit automatically qualifies as a clean unit when the unit meets the criteria in pars. (a) and (b). After the original clean unit designation expires in accordance with sub. (5) or is lost pursuant to sub. (2)(c), the emissions unit may re-qualify as a clean unit under either par. (c), or under the clean unit provisions in s. NR 408.12. To re-qualify as a clean unit under par. (c), the emissions unit shall obtain a new major NSR permit issued under this chapter and meet all the criteria in par. (c). The clean unit designation applies individually for each air contaminant emitted by the emissions unit.

(a) *Permitting requirement*. The emissions unit shall have received a major NSR permit within the past 10 years. The owner or operator shall maintain and be able to provide information that would demonstrate that this permitting requirement is met.

(b) *Qualifying air pollution control technologies*. Air contaminant emissions from the emissions unit shall be reduced through the use of air pollution control technology, which includes pollution prevention or work practices, that meets both of the following requirements:

1. The control technology achieves the LAER level of emissions reductions as determined through issuance of a major NSR permit within the past 10 years. However, the emissions unit is not eligible for the clean unit designation if the LAER determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

2. The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

(c) *Re-qualifying for the clean unit designation*. The emissions unit shall obtain a new major NSR permit that requires compliance with the current-day LAER, and the emissions unit shall meet the requirements in pars. (a) and (b).

(4) EFFECTIVE DATE OF THE CLEAN UNIT DESIGNATION. The effective date of an emissions unit's clean unit designation, that is, the date on which the owner or operator may begin to use

the clean unit test to determine whether a project at the emissions unit is a major modification, is determined according to one of the following:

(a) *Original clean unit designation, and emissions units that re-qualify as clean units by implementing a new control technology to meet current-day LAER*. The effective date is the date the emissions unit's air pollution control technology is placed into service, or 3 years after the issuance date of the major NSR permit, whichever is earlier, but no earlier than the date this section is approved by the administrator as part of the state implementation plan.

(b) *Emissions units that re-qualify for the clean unit designation using an existing control technology*. The effective date is the date the new, major NSR permit is issued.

(5) CLEAN UNIT EXPIRATION. An emissions unit's clean unit designation expires, that is, the date on which the owner or operator may no longer use the clean unit test to determine whether a project affecting the emissions unit is, or is part of, a major modification, according to one of the following:

(a) *Original clean unit designation, and emissions units that re-qualify by implementing new control technology to meet current-day LAER*. For any emissions unit that automatically qualifies as a clean unit under sub. (3)(a) and (b), the clean unit designation expires 10 years after the effective date, or the date the equipment went into service, whichever is earlier; or, it expires at any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in sub. (7).

(b) *Emissions units that re-qualify for the clean unit designation using an existing control technology*. For any emissions unit that re-qualifies as a clean unit under sub. (3)(c), the clean unit designation expires 10 years after the effective date; or, it expires any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in sub. (7).

(6) REQUIRED OPERATION PERMIT CONTENT FOR A CLEAN UNIT. After the effective date of the clean unit designation, and in accordance with the provisions of ch. NR 407, but no later than when the operation permit is renewed, the operation permit for the major stationary source shall include all

of the following terms and conditions related to the clean unit:

(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the air contaminants for which this clean unit designation applies.

(b) If the effective date of the clean unit designation is not known when the clean unit designation is initially recorded in the operation permit, e.g., because the air pollution control technology is not yet in service, the permit shall describe the event that will determine the effective date, e.g., the date the control technology is placed into service. Once the effective date is determined, the owner or operator shall notify the department of the exact date. This specific effective date shall be added to the source's operation permit at the first opportunity, such as a revision, reopening or renewal of the operation permit for any reason, whichever comes first, but in no case later than the next renewal.

(c) If the expiration date of the clean unit designation is not known when the clean unit designation is initially recorded into the operation permit, e.g., because the air pollution control technology is not yet in service, the permit shall describe the event that will determine the expiration date, e.g., the date the control technology is placed into service. Once the expiration date is determined, the owner or operator shall notify the department of the exact date. The expiration date shall be added to the source's operation permit at the first opportunity, such as a revision, reopening or renewal of the operation permit for any reason, whichever comes first, but in no case later than the next renewal.

(d) All emission limitations and work practice requirements adopted in conjunction with LAER, and any physical or operational characteristics that formed the basis for the LAER determination, e.g., possibly the emissions unit's capacity or throughput.

(e) Monitoring, recordkeeping and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the clean unit designation under sub. (7).

(f) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so, as presented in sub. (7).

(7) MAINTAINING THE CLEAN UNIT DESIGNATION. To maintain the clean unit designation, the owner or operator shall conform to all the restrictions listed in pars. (a) to (c). This subsection applies independently to each air contaminant for which the emissions unit has the clean unit designation. Failing to conform to the restrictions for one air contaminant affects the clean unit designation only for that air contaminant.

(a) The clean unit shall comply with the emission limitations and work practice requirements adopted in conjunction with the LAER that is recorded in the major NSR permit, and subsequently reflected in the operation permit.

1. The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the LAER determination, e.g., possibly the emissions unit's capacity or throughput.

2. The clean unit may not emit above a level that has been offset.

(b) The clean unit shall comply with any terms and conditions in the operation permit related to the unit's clean unit designation.

(c) The clean unit shall continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, the clean unit designation ends.

(8) OFFSETS AND NETTING AT CLEAN UNITS. Emissions changes that occur at a clean unit may not be included in calculating a significant net emissions increase, that is, may not be used in a "netting analysis", or be used for generating offsets unless the emission changes occurred before the effective date of the clean unit designation, or after the clean unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a clean unit. However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, the owner or operator

may generate a credit for the difference between the level that qualified the unit as a clean unit and the new emission limitation if the reductions are surplus, quantifiable and permanent. For purposes of generating offsets, the reductions shall also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions must also be enforceable as a practical matter.

[Drafter's note: The Department seeks comment on the following pars. (a) to (c) in regard to the process that should be used to evaluate clean unit designation in the event that the area in which the clean unit is located in is redesignated from attainment to nonattainment. One or more of these provisions, or some variation of pars. (a) to (c) may be included in the final version of the regulation.]

(9) EFFECT OF REDESIGNATION ON THE CLEAN UNIT DESIGNATION. (a) The clean unit designation expires 6 months from the date that an area that the clean unit is located in is redesignated from attainment or unclassifiable to nonattainment, unless the owner or operator demonstrates to the satisfaction of the department that the clean unit meets a LAER level of control. Thereafter, the unit may not be requalified as a clean unit unless the unit is determined to meet LAER through the permitting procedures specified under s. NR 408.12(7).

(b) When an area in which the clean unit is located is redesignated from attainment or unclassifiable to nonattainment, the clean unit designation is not affected by any redesignation. However any future project at the clean unit resulting in a significant net emissions increase shall be offset under the provisions s. NR 408.06.

(c) When an area in which the clean unit is located is redesignated from attainment or unclassifiable to nonattainment, the clean unit designation may be reevaluated by the department in the preparation of its attainment plan.

(d) Redesignation of an area in which the clean unit is located from nonattainment to attainment does not affect the clean unit designation.

NR 408.12 Clean unit provisions for emissions units that achieve an emission limitation comparable to LAER. (1) APPLICABILITY. The provisions of this section apply to emissions units which do not qualify as clean units under s. NR 408.11, but which are achieving a level of emissions control comparable to LAER, as determined by the department in accordance with subs. (2) to (11). The owner or operator of a major stationary source has the option of using this section to determine whether emission increases at a clean unit are part of a project that is a major modification.

(2) GENERAL PROVISIONS FOR CLEAN UNITS. All of the provisions in pars. (a) to (d) apply to a clean unit:

(a) Any project for which the owner or operator begins actual construction after the effective date of the clean unit designation, as determined in accordance with sub. (5), and before the expiration date, as determined in accordance with sub. (6), shall be considered to have occurred while the emissions unit was a clean unit.

(b) If a project at a clean unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that has been determined, pursuant to sub. (4), to be comparable to LAER, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in sub. (8)(d), the emissions unit remains a clean unit.

(c) If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined, pursuant to sub. (4), to be comparable to LAER, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in sub. (8)(d), the emissions unit loses its designation as a clean unit upon issuance of the necessary permit revisions, unless the unit re-qualifies as a clean unit pursuant to sub. (3)(d). If the owner or operator begins actual construction on the project without first applying to revise the emissions

unit's permit, the clean unit designation ends immediately prior to the time when actual construction begins.

(d) A project that causes an emissions unit to lose its designation as a clean unit is subject to the applicability requirements of s. NR 408.02(32m)(a), (b), (c) and (e) as if the emissions unit was never a clean unit.

(3) QUALIFYING OR RE-QUALIFYING TO USE THE CLEAN UNIT APPLICABILITY TEST. An emissions unit qualifies as a clean unit when the unit meets the criteria in pars. (a) to (c). After the original clean unit designation expires in accordance with sub. (6) or is lost pursuant to sub. (2)(c), the emissions unit may re-qualify as a clean unit under either par. (d), or under the clean unit provisions in s. NR 408.11. To re-qualify as a clean unit under par. (d), the emissions unit shall obtain a new permit issued pursuant to the requirements in subs. (7) and (8) and meet all the criteria in par. (d). The department shall make a separate clean unit designation for each air contaminant emitted by the emissions unit for which the emissions unit qualifies as a clean unit.

(a) *Qualifying air pollution control technologies*. Air contaminant emissions from the emissions unit shall be reduced through the use of air pollution control technology, which includes pollution prevention or work practices, that meets both of the following requirements:

1. The owner or operator has demonstrated that the emissions unit's control technology is comparable to LAER according to the requirements of sub. (4). However, the emissions unit is not eligible for the clean unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type, e.g., if the LAER determinations to which it is compared have resulted in a determination that no control measures are required.

2. The owner or operator made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

(b) *Impact of emissions from the unit*. The department shall determine whether the allowable emissions from the emissions unit will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality related value, such as visibility, that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(c) *Date of installation.* Emissions units that have previously installed control technology may qualify as clean units provided the technology is considered comparable to LAER as of January 1, 2001 or later. However, the owner or operator shall apply for the clean unit designation within 2 years after the effective date of this subsection… [revisor insert date]. For technologies installed after the effective date of this subsection… [revisor insert date], the owner or operator shall apply for the clean unit designation at the time the control technology is installed.

(d) *Re-qualifying as a clean unit*. The emissions unit shall obtain a new permit, pursuant to requirements in subs. (7) and (8), that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day LAER, and the emissions unit shall meet the requirements in pars. (a)1. and (b).

(4) DEMONSTRATING CONTROL EFFECTIVENESS COMPARABLE TO LAER. The owner or operator may demonstrate that the emissions unit's control technology is comparable to LAER for purposes of sub. (3)(a) according to either par. (a) or (b). Paragraph (c) specifies the time for making this comparison.

(a) *Comparison to previous LAER determinations*. The administrator maintains an on-line data base of previous determinations of RACT, BACT and LAER in the RACT/BACT/LAER clearinghouse (RBLC). The emissions unit's control technology is presumed to be comparable to LAER if it achieves an emission limitation that is equal to or better than any one of the five best performing similar sources for which a LAER determination has been made within the preceding 5 years and entered into the RBLC. The

department shall compare this presumption to any additional LAER determinations of which it is aware, and shall consider any information on achieved-in-practice pollution control technologies provided during the public comment period, to determine whether any presumptive determination that the control technology is comparable to LAER is correct.

(b) *The substantially-as-effective test*. The owner or operator may demonstrate that the emissions unit's control technology is substantially as effective as LAER. In addition, any other person may present evidence related to whether the control technology is substantially as effective as LAER during the public participation process required under sub. (7). The department shall consider any evidence presented on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as LAER.

(c) *Time of comparison.* 1. 'Emissions units with control technologies that are installed before the effective date of this subsection… [revisor insert date]'. The owner or operator of an emissions unit whose control technology is installed before the effective date of this subsection… [revisor insert date] may, at its option:

a. Demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed. If the control technology was installed before January 1, 2001, the control technology shall be compared to LAER requirements that applied on or after January 1, 2001.

b. Demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day LAER requirements. The expiration date of the clean unit designation will depend on which option the owner or operator uses, as specified in sub. (6).

2. 'Emissions units with control technologies that are installed after the effective date of this subsection… [revisor insert date]'. The owner or operator shall demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day LAER requirements.

(5) EFFECTIVE DATE OF THE CLEAN UNIT DESIGNATION. The effective date of an emissions unit's clean unit designation, that is, the date on which the owner or operator may begin to use the clean unit test to determine whether a project involving the emissions unit is a major modification, is the date that the emissions unit's air pollution control technology is placed into service or the date that the permit required by sub. (7) is issued, whichever is later.

(6) CLEAN UNIT EXPIRATION. If the owner or operator demonstrates that the emission limitation achieved by the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, the clean unit designation expires 10 years from the date that the control technology was installed. If the control technology was installed before January 1, 2001, and the control technology was found to be comparable to LAER requirements of January 1, 2001, the clean unit designation expires on January 1, 2011. For all other emissions units, the clean unit designation expires 10 years from the effective date of the clean unit designation, as determined according to sub. (5). In addition, for all emissions units, the clean unit designation expires any time the owner or operator fails to comply with the provisions for maintaining the clean unit designation in sub. (9).

(7) PROCEDURES FOR DESIGNATING EMISSIONS UNITS AS CLEAN UNITS. The department shall designate an emissions unit a clean unit only by issuing a permit under ch. NR 406. The permit shall also meet the requirements in sub. (8).

(8) REQUIRED PERMIT CONTENT. The permit required by sub. (7) shall include the terms and conditions in pars. (a) to (f). The terms and conditions shall be incorporated into the source's operation permit in accordance with the provisions of ch. NR 407 no later than when the operation permit is renewed. The terms and conditions are as follows:

(a) A statement indicating that the emissions unit qualifies as a clean unit and identifying the air contaminants for which the clean unit designation applies.

(b) If the effective date of the clean unit designation is not known when the department issues the

permit, e.g., because the air pollution control technology is not yet in service, the permit shall describe the event that will determine the effective date, e.g., the date the control technology is placed into service. Once the effective date is known, the owner or operator shall notify the department of the exact date. This specific effective date shall be added to the source's operation permit at the first opportunity, such as a revision, reopening or renewal of the operation permit for any reason, whichever comes first, but in no case later than the next renewal.

(c) If the expiration date of the clean unit designation is not known when the department issues the permit, e.g., because the air pollution control technology is not yet in service, the permit shall describe the event that will determine the expiration date, e.g., the date the control technology is placed into service. Once the expiration date is known, the owner or operator shall notify the department of the exact date. The expiration date shall be added to the source's operation permit at the first opportunity, such as a revision, reopening or renewal of the operation permit for any reason, whichever comes first, but in no case later than the next renewal.

(d) All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to LAER, and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER, e.g., possibly the emissions unit's capacity or throughput.

(e) Monitoring, recordkeeping and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its clean unit designation under sub. (9).

(f) Terms reflecting the owner or operator's duties to maintain the clean unit designation and the consequences of failing to do so, as presented in sub. (9).

(9) MAINTAINING THE CLEAN UNIT DESIGNATION. To maintain the clean unit designation, the owner or operator shall conform to all the restrictions listed in pars. (a) to (e). This

subsection applies independently to each air contaminant for which the department has designated the emissions unit a clean unit. Failing to conform to the restrictions for one air contaminant affects the clean unit designation only for that air contaminant. The restrictions are as follows:

(a) The clean unit shall comply with the emission limitations and work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to LAER.

(b) The owner or operator may not make a physical change in or change in the method of operation of the clean unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to LAER, e.g., possibly the emissions unit's capacity or throughput.

(c) The clean unit may not emit above a level that has been offset.

(d) The clean unit shall comply with any terms and conditions in the operation permit related to the unit's clean unit designation.

(e) The clean unit shall continue to control emissions using the specific air pollution control technology that was the basis for its clean unit designation. If the emissions unit or control technology is replaced, the clean unit designation ends.

(10) OFFSETS AND NETTING AT CLEAN UNITS. Emissions changes that occur at a clean unit may not be included in calculating a significant net emissions increase, that is, may not be used in a "netting analysis" or be used for generating offsets unless the use occurs before the effective date of this subsection… [revisor insert date] or after the clean unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a clean unit. However, if the clean unit reduces emissions below the level that qualified the unit as a clean unit, the owner or operator may generate a credit for the difference between the level that qualified the unit as a clean unit and the emissions unit's new emission limitation if the reductions are surplus, quantifiable and permanent. For purposes of

generating offsets, the reductions shall also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

[Drafter's note: The Department seeks comment on the following pars. (a) to (c) in regard to the process that should be used to evaluate clean unit designation in the event that the area in which the clean unit is located in is redesignated from attainment to nonattainment. One or more of these provisions, or some variation of pars. (a) to (c) may be included in the final version of the regulation.]

(11) EFFECT OF REDESIGNATION ON THE CLEAN UNIT DESIGNATION. (a) The clean unit designation expires 6 months from the date that an area in which the clean unit is located is redesignated from attainment or unclassifiable to nonattainment, unless the owner or operator demonstrates to the satisfaction of the department that the clean unit meets a LAER level of control. Thereafter, the unit may not be requalified as a clean unit unless the unit is determined to meet LAER through the permitting procedures specified under sub. (7).

(b) When an area in which the clean unit is located is redesignated from attainment or unclassifiable to nonattainment, the clean unit designation is not affected by any redesignation. However, any project at the clean unit resulting in a significant net emissions increase shall be offset under the provisions in s. NR 408.06.

(c) When an area in which the clean unit is located is redesignated from attainment or unclassifiable to nonattainment, the clean unit designation may be reevaluated by the department in the preparation of its attainment plan.

(d) Redesignation of an area in which the clean unit is located from nonattainment to attainment does not affect the clean unit designation.

NR 408.13 Pollution control project (PCP) exclusion procedural requirements. (1) APPLICABILITY. The provisions of this section apply to an activity or project at an existing emissions

unit located at a major stationary source for the purposes of reducing emissions of from the unit. The owner or operator of a major stationary source has the option of using this section to determine whether emission increases of collateral air contaminants resulting from the activity or project is a major modification.

(2) Before an owner or operator begins actual construction of a PCP, the owner or operator shall either submit a notice to the department if the project is listed in s. NR 408.02 (27)(a) to (f), or if the project is not listed in s. NR 408.02 (27)(a) to (f), shall submit a permit application and obtain approval to use the PCP exclusion from the department consistent with the requirements in sub. (6). Regardless of whether the owner or operator submits a notice or a permit application, the project shall meet the requirements in sub. (3), and the notice or permit application shall contain the information required in sub. (4).

(3) Any project that relies on the PCP exclusion shall meet both of the following requirements:

(a) *Environmentally beneficial analysis*. The environmental benefit from the emissions reductions of air contaminants regulated under the act shall outweigh the environmental detriment of emissions increases in air contaminants regulated under the act. A statement that a technology from s. NR 408.02(27)(a) to (f) is being used shall be presumed to satisfy this requirement.

(b) *Air quality analysis*. The emissions increases from the project may not cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality related value, such as visibility, that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(4) The owner or operator shall include all of the following information in the notice or permit application regarding the PCP sent to the department:

(a) A description of the project.

(b) The potential emissions increases and decreases of any air contaminant regulated under the act

and the projected emissions increases and decreases using the method in s. NR 408.02(32m) that will result from the project, and a copy of the environmentally beneficial analysis required by sub. (3)(a).

(c) A description of monitoring and recordkeeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods shall be sufficient to meet the requirements in s. NR 407.09(4).

(d) A certification that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by sub. (3), with information submitted in the notice or permit application, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral air contaminants.

(e) A demonstration that the PCP will not have an adverse air quality impact, e.g., modeling, screening level modeling results, or a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise, as required by sub. (3)(b). An air quality impact analysis is not required for any air contaminant that will not experience a significant emissions increase as a result of the project.

(5) The owner or operator may begin actual construction of the project for projects listed in s. NR 405.02(24m)(a) to (f), immediately after notice is sent to the department. The owner or operator shall respond to any requests by the department for additional information that the department determines is necessary to evaluate the suitability of the project for the PCP exclusion. If the department determines that the project will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality related value, such as visibility, that has been identified for a federal class I area by a federal land manager and for which information is available to the general public, the owner or operator shall be liable for any violations that may have occurred as a result of commencing

with the project. If the department does not respond to notices filed under this subsection within 21 days, the owner or operator may presume that the department has determined that the project will not cause or contribute to a violation of any national ambient air quality standard or PSD increment, or adversely impact an air quality related value, such as visibility, that has been identified for a federal class I area by a federal land manager.

(6) Before an owner or operator may begin actual construction of a PCP project that is not listed in s. NR 408.02 (27)(a) to (f), the project shall be approved by the department and recorded in a construction permit under issued ch. NR 406 or an operation permit issued under ch. NR 407. This includes the requirement that the department provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a 30-day period for the public and the administrator to submit comments. The department shall address all material comments received by the end of the public comment period before taking final action on the permit.

(7) Upon installation of the PCP, the owner or operator shall comply with the following operational requirements:

(a) *General duty*. The owner or operator shall operate the PCP consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by sub. (3), with information submitted in the notice or permit application required by sub. (4), and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

(b) *Recordkeeping*. The owner or operator shall maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in par. (a).

(c) *Permit requirements*. The owner or operator shall comply with any provisions in the

construction permit or operation permit related to use and approval of the PCP exclusion.

(d) *Generation of emission reduction credits*. Emission reductions created by a PCP may not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the PCP exclusion, e.g., taking an operational restriction on the hours of operation. The owner or operator may generate a credit for the difference between the level of reduction which was used to qualify for the PCP exclusion and the new emission limitation if the reductions are surplus, quantifiable and permanent if the additional reduction was not also approved by the department as a PCP. For purposes of generating offsets, the reductions shall also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

NR 408.14 Actuals PALs. (1) APPLICABILITY. (a) The department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets all of the requirements in this section. The term "PAL" shall mean "actuals PAL" throughout this section.

(b) The department may not allow an actuals PAL for VOC or NO_X for any major stationary source located in an extreme ozone nonattainment area.

(c) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements in this section, and complies with the PAL permit:

1. Is not a major modification for the PAL air contaminant.

2. Does not have to be approved under this chapter.

3. Is not subject to the provisions in s. NR 408.10(4), if the owner or operator elects to remove previously elected permit conditions under sub. (6)(e)1.

(d) Except as provided under par. (c)3., a major stationary source shall continue to comply with all

applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

(2) DEFINITIONS. The definitions in pars. (a) to (k) are used for the purpose of developing and implementing actuals PALs consistent with this section. When a term is not defined in this subsection, it shall have the meaning given in s. NR 408.02.

(a) "Actuals PAL" means a PAL based on the baseline actual emissions of all emissions units at the source, that emit or have the potential to emit the PAL air contaminant, except units that have been designated as clean units under s. NR 408.12 or 408.13.

(b) "Allowable emissions" has the meaning given in s. NR 408.02(2), except as this definition is modified according to both of the following:

1. The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

2. An emissions unit's potential to emit shall be determined using the definition in s. NR 408.02(28), except that the words "or enforceable as a practical matter" should be added after "federally enforceable".

(c) "Major emissions unit" means either of the following:

1. Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL air contaminant in an attainment area.

2. Any emissions unit that emits or has the potential to emit the PAL air contaminant in an amount that is equal to or greater than the major source threshold for the PAL air contaminant as defined by the act for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(d) "PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL air contaminant.

(e) "PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

(f) "PAL major modification" means, notwithstanding s. NR 408.02(20) and (23), any physical change in, or change in the method of operation of the PAL source that causes it to emit the PAL air contaminant at a level equal to or greater than the PAL.

(g) "PAL permit" means the construction permit or the operation permit issued by the department that establishes a PAL for a major stationary source.

(h) "PAL air contaminant" means the air contaminant for which a PAL is established.

(i) "Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for an air contaminant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this section.

(j) "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL air contaminant in an amount that is equal to or greater than the significant level, as defined in s. NR 408.02(32) or in the act, whichever is lower, for that PAL air contaminant, but less than the amount that would qualify the unit as a major emissions unit.

(k) "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL air contaminant in an amount less than the significant level for that PAL air contaminant, as defined in s. NR 408.02(32) or in the act, whichever is lower.

(3) PERMIT APPLICATION REQUIREMENTS. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit all of the following information to the department for approval:

(a) A list of all emissions units at the source designated as small, significant or major based on their potential to emit as well as those units that have been designated or are proposed to be designated as clean units, as defined by s. NR 408.02(7m). In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations or work practices apply to each unit that is not designated as a clean unit.

(b) Calculations of the baseline actual emissions with supporting documentation. Baseline actual emissions shall include emissions associated not only with operation of the unit, but also emissions associated with planned startups and shutdowns.

(c) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by sub. (13)(a).

(4) GENERAL REQUIREMENTS FOR ESTABLISHING PALS. (a) The department may establish a PAL at a major stationary source if, at a minimum, all of the following requirements are met:

1. The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source, excluding those units that have been designated as clean units. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL. For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

2. The PAL shall be established in a PAL permit that meets the public participation requirements in sub. (5).

3. The PAL permit shall contain all the requirements of sub. (7).

4. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL air contaminant at the major stationary source, excluding those emissions units that have been designated as clean units.

5. Each PAL shall regulate emissions of only one air contaminant.

6. Each PAL shall have a PAL effective period of 10 years.

7. The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping and reporting requirements provided in subs. (12) to (14) for each emissions unit under the PAL through the PAL effective period.

(b) At no time during or after the PAL effective period are emissions reductions of a PAL air contaminant that occur during the PAL effective period creditable as decreases for purposes of offsets under s. NR 408.06 unless the level of the PAL is reduced by the amount of the emissions reductions and the reductions would be creditable in the absence of the PAL.

(5) PUBLIC PARTICIPATION REQUIREMENTS FOR PALS. PALs for existing major stationary sources shall be established, renewed or increased through a procedure that is consistent with s. NR 408.09. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department shall address all material comments before taking final action on the permit.

(6) SETTING THE 10-YEAR ACTUALS PAL LEVEL. (a) The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions, as defined in s. NR 408.02(2m), of the PAL air contaminant for each emissions unit at the source that has not been designated as a clean unit; plus an amount equal to the applicable significant level for the PAL air contaminant under s. NR 408.02(32) or under the act, whichever is lower.

(b) When establishing the actuals PAL level, for a PAL air contaminant, only one consecutive 24-month period may be used to determine the baseline actual emissions for all existing emissions units. The

same consecutive 24-month period shall be used for each air contaminant to be covered under a PAL at the major stationary source, unless alternative consecutive 24-month periods have been approved by the department.

(c) Emissions associated with units that were permanently shutdown after the 24-month period established under par. (b) shall be subtracted from the PAL level.

(d) Emissions from units on which actual construction began after the 24-month period established under par. (b) shall be added to the PAL level as follows:

1. In an amount equal to the potential to emit of the unit if the unit has operated less than 24 months.

2. In an amount equal to 12-consectutive months of actual emissions from the unit if the unit has operated for 24 or more months.

(e) Emissions from units that had previously elected permit conditions to avoid permitting under this chapter or ch. NR 405 shall be included in the PAL under one of the following:

1. If the owner or operator elects to remove previously elected permit conditions when including the unit in the PAL, emissions shall be adjusted to an amount comparable to LAER levels, established at the time of the PAL application.

2. If the owner or operator elects to maintain previously elected permit conditions under the PAL, baseline actual emissions shall be used.

(f) The department shall specify a reduced PAL level, in tons/yr, in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirements that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of the unit.

(g) The PAL level at the end of the PAL effective period may not exceed a level equal to the sum of the baseline actual emissions from small units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming the application of BACT equivalent controls, plus an amount equal to the applicable significant level for the PAL air contaminant, excluding any emissions units that have been designated as clean units. The level of control that would result from BACT equivalent control on each significant and major emissions unit shall be determined by conducting a BACT analysis at the time the application for the PAL permit is submitted.

(7) CONTENTS OF THE PAL PERMIT. The PAL permit shall contain, at a minimum, all of the following information:

(a) The PAL air contaminant and the applicable source-wide emission limitation in tons per year.

(b) The PAL permit effective date and the expiration date of the PAL.

(c) A specification that if a major stationary source owner or operator applies to renew a PAL in accordance with sub. (10) before the end of the PAL effective period, the PAL does not expire at the end of the PAL effective period, but shall remain in effect until a revised PAL permit is issued by the department.

(d) A requirement that emission calculations for compliance purposes include emissions from planned startups and shutdowns.

(e) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of sub. (9).

(f) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by sub. (13)(a).

(g) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under sub. (12).

(h) A requirement to retain the records required under sub. (13) on site. Records may be retained in an electronic format.

(i) A requirement to submit the reports required under sub. (14) by the required deadlines.

(j) The applicable source-wide emission limitation that applies at the end of the PAL effective period, established in sub. (6)(g).

(k) Any other requirements that the department deems necessary to implement and enforce the PAL.

(8) PAL EFFECTIVE PERIOD AND REOPENING OF THE PAL PERMIT. (a) *PAL effective period*. The department shall specify a PAL effective period of 10 years.

(b) *Reopening of the PAL permit.* 1. During the PAL effective period, the department shall reopen the PAL permit to do any of the following:

a. Correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL.

b. Reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under this chapter.

c. Revise the PAL to reflect an increase in the PAL as provided under sub. (11).

d. Revise the PAL to reflect a decrease in the PAL due to an emissions unit previously covered by the PAL being newly designated as a clean unit.

2. The department may reopen the PAL permit to do any of the following:

a. Reduce the PAL to reflect newly applicable federal requirements, for example, NSPS, with compliance dates after the PAL effective date.

b. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter and that the state may impose on the major stationary source.

c. Reduce the PAL if the department determines that a reduction is necessary to avoid causing or

contributing to a NAAQS or PSD increment violation, or to an adverse impact on an AQRV that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

3. Except for the permit reopening in subd. 1.a. for the correction of typographical or calculation errors that do not increase the PAL level, all reopenings shall be carried out in accordance with the public participation requirements of sub. (5).

(9) EXPIRATION OF A PAL. Any PAL that is not renewed in accordance with the procedures in sub. (10) shall expire at the end of the PAL effective period, and the following requirements shall apply:

(a) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

1. Within the time frame specified for PAL renewals in sub. (10)(b), the major stationary source shall submit a proposed allowable emission limitation for each emissions unit or each group of emissions units, if a grouping is more appropriate as decided by the department by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under sub. (10)(e), the distribution shall be made as if the PAL had been adjusted.

2. Based upon the information submitted under subd. 1., the department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(b) Each emissions unit or group of emissions units shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems, such as

source testing, emission factors, etc., other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(c) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under par. (a)2., the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(d) Any physical change or change in the method of operation at the major stationary source shall be subject to the requirements of this chapter if the change meets the definition of major modification in s. NR 408.02(20).

(e) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements, BACT, RACT, NSPS, etc., that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to s. NR 408.10(4), but were eliminated by the PAL in accordance with the provisions in sub. (1)(b)3.

(10) RENEWAL OF A PAL. (a) The department shall follow the procedures specified in sub. (5) in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During the public review, any person may propose a PAL level for the source for consideration by the department.

(b) The owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator submits a complete application to renew the PAL within this time period, the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(c) The application to renew a PAL permit shall contain all of the following information:

1. The information required in sub. (3)(a) to (c).

2. A proposed PAL level.

3. The sum of the potential to emit of all emissions units under the PAL, with supporting documentation.

4. The proposed PAL level that applies at the end of the PAL effective period.

5. Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(d) In determining whether and how to adjust the PAL, the department shall consider the options outlined in subds. 1 and 2. However, in no case may any adjustment fail to comply with subd. 3. The adjustment option, and requirements, are as follows:

1. If the emissions level calculated in accordance with sub. (6) is equal to or greater than 80% of the PAL level at the end of the PAL effective period, the department may renew the PAL at the same level as that in effect at the end of the PAL effective period without considering the factors in subd. 2.

2. The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

3. Notwithstanding subds. 1. and 2., if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source. The department may not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of sub. (11).

(e) If the compliance date for a state or federal requirement that applies to the PAL source occurs

during the PAL effective period, and if the department has not already adjusted for the requirement, the PAL shall be adjusted at the time of PAL permit renewal or operation permit renewal, whichever occurs first.

(11) INCREASING A PAL DURING THE PAL EFFECTIVE PERIOD. (a) The department may increase a PAL emission limitation only if the major stationary source complies with all of the following provisions:

1. The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. The application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

2. As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units under the PAL assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units, exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. If the emissions unit is currently required to comply with BACT or LAER that was established within the previous 10 years, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER that currently applies to that emissions unit.

3. The owner or operator obtains a major NSR permit for all emissions units identified in subd. 1, regardless of the magnitude of the emissions increase resulting from them. These emissions units shall comply with any emissions requirements resulting from the major NSR process, for example, LAER and

offsets, even though they have also become subject to the PAL or continue to be subject to the PAL.

4. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL air contaminant.

(b) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units, assuming application of BACT equivalent controls as determined in accordance with par. (a)2., plus the sum of the baseline actual emissions of the small emissions units and excluding any clean units.

(c) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of sub. (5).

(12) MONITORING REQUIREMENTS FOR PALS (a) 1. Each PAL permit shall contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL air contaminant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit shall be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by any authorized system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

2. The PAL monitoring system shall employ one or more of the 4 general monitoring approaches meeting the minimum requirements in par. (b) and shall be approved by the department.

3. Notwithstanding subd. 2., the owner or operator may also employ an alternative monitoring approach that meets subd. 1. if approved by the department.

4. Failure to use a monitoring system that meets the requirements of this subsection renders the PAL invalid.

(b) The following are acceptable general monitoring approaches when conducted in accordance

with the minimum requirements in pars. (c) to (i):

1. Mass balance calculations for activities using coatings or solvents.

2. CEMS.

3. CPMS or PEMS.

4. Emission factors.

(c) An owner or operator using mass balance calculations to monitor PAL air contaminant emissions from activities using coating or solvents shall do all of the following:

1. Provide a demonstrated means of validating the published content of the PAL air contaminant that is contained in or created by all materials used in or at the emissions unit.

2. Assume that the emissions unit emits all of the PAL air contaminant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process.

3. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from the material, use the highest value of the range to calculate the PAL air contaminant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(d) An owner or operator using CEMS to monitor PAL air contaminant emissions shall ensure that the CEMS does both of the following:

1. Complies with applicable performance specifications found in 40 CFR part 60, appendix B incorporated by reference in s. NR 484.04(21).

2. Samples, analyzes and records data at least every 15 minutes while the emissions unit is operating.

(e) An owner or operator using CPMS or PEMS to monitor PAL air contaminant emissions shall ensure that the CPMS or PEMS does both of the following:

1. Is based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL air contaminant emissions across the range of operation of the emissions unit.

2. Samples, analyzes and records data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(f) An owner or operator using emission factors to monitor PAL air contaminant emissions shall do all of the following:

1. Adjust all emission factors, if appropriate, to account for the degree of uncertainty or limitations in the factors' development.

2. Operate the emissions unit within the designated range of use for the emission factor, if applicable.

3. If technically practicable, for a significant emissions unit that relies on an emission factor to calculate PAL air contaminant emissions, conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the department determines that testing is not required.

(g) A source owner or operator shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during the periods is specified in the PAL permit.

(h) Notwithstanding the requirements in pars. (c) to (g), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL air contaminant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance, do one of the following:

1. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at the operating points.

2. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL air contaminant emissions is a violation of the PAL.

(i) All data used to establish the PAL air contaminant level shall be re-validated through performance testing or other scientifically valid means approved by the department under the methods and frequency required under chs. NR 400 to 499.

(13) RECORDKEEPING REQUIREMENTS. (a) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of the record.

(b) The PAL permit shall require an owner or operator to retain a copy of the following records, for the duration of the PAL effective period plus 5 years:

1. A copy of the PAL permit application and any applications for revisions to the PAL.

2. Each annual certification of compliance pursuant to s. NR 439.03(8) and the data relied on in certifying the compliance.

(14) REPORTING AND NOTIFICATION REQUIREMENTS. The owner or operator shall submit the following reports and information to the department in accordance with the operation permit program:

(a) *Semi-annual report*. The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain all of the following information:

1. The identification of owner and operator and the permit number.

2. Total annual emissions, in tons/year, based on a 12-month rolling total for each month in the reporting period recorded pursuant to sub. (13)(a).

3. All data relied upon, including any quality assurance or quality control data, in calculating the

monthly and annual PAL air contaminant emissions.

4. A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

5. The number, duration and cause of any deviations or monitoring malfunctions other than the time associated with zero and span calibration checks, and any corrective action taken.

6. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the air contaminant or the number determined by method included in the permit, as provided by sub. (12)(g).

7. A signed statement by the responsible official certifying the truth, accuracy and completeness of the information provided in the report.

(b) *Deviation report*. The owner or operator shall promptly submit a report for any deviation or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to s. NR 439.03 shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits in s. NR 439.03. The reports shall contain all of the following information:

1. The identification of owner and operator and the permit number.

2. The PAL requirement that experienced the deviation or that was exceeded.

3. Emissions resulting from the deviation or the exceedance.

4. A signed statement by the responsible official certifying the truth, accuracy and completeness of the information provided in the report.

(c) *Re-validation results*. The results of any re-validation test or method shall be submitted within 3 months after completion of the test or method.

(15) TRANSITION REQUIREMENTS. (a) The department may not issue a PAL that does not comply with the requirements of this section after the effective date of this subsection… [revisor insert date].

(b) The department may supersede any PAL which was established prior to the effective date of this subsection… [revisor insert date] with a PAL that complies with the requirements of this section.

SECTION 30. NR 484.04(21) is amended to read:

	CFR Appendix Referenced	Title	Incorporated by Reference For
NR 484.04 (21)	40 CFR part 60 Appendix B	Performance Specifications	NR 405 NR 408 NR 428 NR 439 NR 460 to 469

SECTION 31. NR 484.04(27m) is created to read:

	CFR Appendix Referenced	Title	Incorporated by Reference For
NR 484.04 (27m)	40 CFR part 82, SubPart A, Appendices A and B		NR 405 NR 408

SECTION 32. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 33. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By_____
Scott Hassett, Secretary

(SEAL)

[RWP1][revise this line as appropriate]

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